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FEDERAL ACKNOWLEDGMENT PROCESS

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON FEDERAL ACKNOWLEDGMENT PROCESS

MAY 26, 1988
WASHINGTON, DC

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FEDERAL ACKNOWLEDGMENT PROCESS

THURSDAY, MAY 26, 1988

U.S. Senate,
Select Committee on Indian Affairs,
Washington, DC.

The committee met, pursuant to notice, at 2:20 p.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, DeConcini, McCain, and Evans.

The Chairman. Our first witness will be Miss Hazel Elbert, Deputy to the Assistant Secretary for Indian Affairs, Department of the Interior.

Miss Elbert, welcome, and would you care to introduce your colleagues?

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

Good afternoon, I would like to welcome everyone to this markup and oversight hearing today.

Today we will be considering S. 2153, the Salt River Water Settlement Act, S. 1509, the Indian Health Promotion and Disease Prevention Act of 1987, and H.R. 2615, pertaining to certain lands held in trust for the Pechanga band of California.

This markup will be followed by an oversight hearing on the Federal acknowledgment petition process for Federal recognition of Indian tribes and certain Indian organizations. The process that Indian groups must go through in order to be acknowledged as a federally recognized tribe by the United States Government.

As of May 12, 1988, 110 petitions have been received by the Branch of Acknowledgment and Research. These petitions are in various stages of review. Petitioners include Indian tribes or groups who for one reason or another lost their sovereign status and are now seeking to regain it and Indian tribes or groups who have never been recognized by the Federal Government.

The importance of attaining Federal recognition status includes eligibility for special assistance and services afforded other federally recognized tribes, as well as affirmation that they are aboriginal peoples of this land. It is important to the pride and heritage of these people.

Today's slate of witnesses will share their views with the committee on the problems they have encountered with the Federal acknowledgment process and recommendations that they believe will improve the Federal Acknowledgment process.

STATEMENT OF HAZEL ELBERT, DEPUTY TO THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY GEORGE ROTH, CULTURAL ANTHROPOLOGIST, AND MICHAEL LAWSON, HISTORIAN

Ms. ELBERT. Thank you, Mr. Chairman.

Accompanying me today are George Roth, a cultural anthropologist, and Michael Lawson, a historian from our Acknowledgment staff.

Mr. Chairman, I am pleased to be here today to discuss the process used by the Bureau of Indian Affairs to determine whether a group should be granted Federal acknowledgment as an Indian tribe.

We believe that the present acknowledgment process is a good one, based on thorough evaluation of all of the available facts. Credible decisions must be based on careful consideration of the evidence to protect the special relationship between the United States and recognized Indian tribes. We have a professional staff, with extensive backgrounds in American Indian history and ethnology and American genealogy. Although the present process is slower than desirable, this is preferable to a hasty decision.

Not every group that petitions the Department, or Congress, for acknowledgment is a tribe. The current process sets a reasonable standard, thoroughly grounded in case law and historical policy. The courts have defined a tribe on basically similar grounds of tribal character as those in the present acknowledgment regulations.

To date 7 petitioners have been acknowledged and 14 denied under the process, with another 5 currently under active consideration. Four others have been resolved outside the process. Of the remaining 83 petitioners, 57 have submitted no documentation and the balance have documented petitions awaiting consideration or in the preliminary review process. The entire process may take three or four years from the time the group begins its research, depending on the amount of time required by the group to conduct its research.

In my written statement, I address each of the six issues you raised in your March 30 letter. At this time I would just like to briefly touch on a couple of those issues.

The speed of the Federal Acknowledgment process has been of concern to petitioners, Bureau officials, and the Congress almost from the inception of the process. An upsurge of completed petitions has far outstripped the staff's ability to process them in a timely fashion. The Bureau has taken a number of actions including purchasing computers for professional staff, contracting out portions of the necessary research and attempting to use interns to increase efficiency and productivity.

Clearly, the backlog of petitions indicates that sufficient staff is not available to complete our process more quickly. However, we have not been willing to make additional resources available to research possible new tribes by reducing programs and services for those tribes we already serve.

In response to your question about an independent appeals process, we are exploring the idea of having the Department of the Interior's Board of Indian Appeals review the findings of a petition to see if there is ample evidence to reconsider the determination.

The committee asked about the status of the proposed revisions to the Acknowledgment Regulations that are now clearing the administrative system. These revisions result from the experience of ten years on the part of the staff, and comments on the part of petitioners, researchers, and others involved in the Acknowledgment Process. The revisions will not make major changes in the basic Acknowledge criteria and definitions, and will be widely distributed for comment before being published in final form.

In summary, the recognition of an Indian tribe by the United States carries with it a perpetual commitment. There are sound reasons to proceed with the utmost caution when considering the acknowledgment of unrecognized Indian groups. In the absence of a universally accepted definition of Indian tribes, we believe the present standards and the application of these standards are appropriate for the evaluation of groups seeking acknowledgment. We believe they reflect past practices and modern case law, as well as the suggestions of the American Indian Policy Review Commission in 1977.

Piecemeal legislation for individual groups invites the problem of inconsistent standards that in the past led to the establishment of the present administrative process.

Although our current process is lengthy, we believe it is thorough, fair, and appropriate.

Mr. Chairman, this concludes my remarks. We will be pleased to answer any questions the committee may have.

The CHAIRMAN. Thank you very much, Ms. Elbert.

You have testified that seven petitioners have been acknowledged. By that word, do I assume that it means "approved"?

Ms. ELBERT. That is correct.

The CHAIRMAN. And 14 denied, 5 currently under consideration, and 4 others have been resolved.

Among the 83 petitioners that are still awaiting action, what is the oldest petition? When was the oldest filed?

Ms. ELBERT. August of 1986.

The CHAIRMAN. August of 1986.

Ms. ELBERT. No, no, no. These are petitions that are ready to be considered for processing.

The CHAIRMAN. No; among the 83 that are still waiting, what is the oldest petition?

Ms. ELBERT. The one we've had on file the longest is what you are asking.

The CHAIRMAN. We have been waiting for you to find it.

Ms. ELBERT. That's not it.

The CHAIRMAN. What date is that?

Ms. ELBERT. If you will excuse me a moment, Mr. Chairman.

A book full of statistics, but I'm afraid that's the one thing we didn't take a look at, was the oldest one of the 83 left.

The CHAIRMAN. I asked this question because you indicated, and I concur with you, that this is not a process that one should rush into. The determination that is made will have a significant impact upon those who are involved. But I want to know how long deliberate consideration is, 10 years, 20 years? How long must a tribe wait to have the Bureau look at their petition?

Ms. ELBERT. Well, the oldest one that has been waiting for us to take a look at them is in August 1986. We could have a petition on file that's been there for a longer than that period of time, but if it's not ready for consideration, it's basically an incomplete petition, so it's not ready for consideration.

If the petitioner doesn't complete the petition, give all of the documentation, it could lay there for many years.

The CHAIRMAN. When you say 57 have submitted no documentation, are they notified that documentation is necessary, or do you keep that a secret?

Ms. ELBERT. These 57 have been notified.

The CHAIRMAN. And how long have you waited to receive the documentation?

Ms. ELBERT. Well, we have waited as long as 10 years since the process started. It varies, depending on when we gave them the obvious deficiencies letter.

Now, there are some petitions, Mr. Chairman, that predate the regulations, and, of course, we didn't do anything with those until after the regulations went into effect.

The CHAIRMAN. Of the 26 that have been submitted with documentation how many are awaiting your consideration?

Ms. ELBERT. We only have three that are awaiting active consideration, that are ready to go. We don't have enough staff to process them.

The CHAIRMAN. What about the others of the 26?

Ms. ELBERT. We have four that we are awaiting staff review of the petitioners' response to the obvious deficiencies letter, 13 that are awaiting petitioners' response to obvious deficiency review, and 6 that are awaiting preliminary staff review for obvious deficiencies.

The CHAIRMAN. How long does it take to have a staff review?

Ms. ELBERT. Well, it can take anywhere from up to 6 months or longer.

The CHAIRMAN. Of the 26, how long is the longest that one has had to wait?

Ms. ELBERT. Based on our figures here, I believe it's about 1 year.

The CHAIRMAN. So the oldest ready petition was filed only 1 year ago?

Ms. ELBERT. No; I must have misunderstood the question. I thought it was how long had we waited to do the review, the obvious deficiencies review. The longest anyone has waited for that is about 1 year.

The CHAIRMAN. Well, as far as I am concerned, waiting begins at the time of filing, not when you decide to look at it.

Ms. ELBERT. This one has only been filed for 1 year.

I think one thing that would be helpful, Mr. Chairman, is if we explain the process to you so that we could outline the steps that are taken when we process a petition.

The CHAIRMAN. Fine.

Ms. ELBERT. I would like for George Roth to do that.

Mr. ROTH. We have many petitions on file which are simply letters or tribal council resolutions. A petition is not ready to go until we receive the documentation to see if the petitioner meets the seven criteria in the regulations. And what we normally do, we have considerable technical consultation with the petitioner in helping them prepare this.

When it is received, we are required to conduct what we call an obvious deficiency review to see if they, on a preliminary basis, are ready to be considered.

We then write back and provide some detail on what else we think is necessary. A petitioner may take any time from 2 months to 8 or 9 years to respond to that.

When that is received, it is given very brief look to see if what we have requested has been on a preliminary basis looked at. If it has completed that second step, then it is considered ready to go, and we have only three that have completed all those steps. We have one that's been sent in a response that we've waited since July to look at. That's our longest backlog on that.

The CHAIRMAN. How many staff members do you have working on petitions?

Ms. ELBERT. We have six. We work in teams, a genealogist, an anthropologist, and a historian. So we have enough staff for two teams.

The CHAIRMAN. On an average, about how much time is expended on a petition?

Ms. ELBERT. We have a year under the regulations, and we usually use that much time. There are some situations where we have extended that period of time.

The CHAIRMAN. What is your rationale for requiring tribes that have previously entered into treaties with the United States go through the same process as tribes who have never been recognized by the Federal Government? Don't you think there is a difference?

Ms. ELBERT. I guess the feeling there is just because you descend from someone who signed a treaty doesn't necessarily mean that you qualify as a tribe.

The CHAIRMAN. Well, your predecessor agency must have recognized the validity of their membership in the tribe.

Ms. ELBERT. The criteria that we have in the Acknowledgment Process, there are a number of them, there are seven of them that a group must meet in order to qualify or be acknowledged as a tribe. And all of those taken together we think is appropriate, whether you had the connection with the treaty signer, or not the connection with the treaty signer.

The process—you could be descended from someone who had a connection with signing a treaty and may not have ever had any contact with the tribe from that point on. There is a distinction that the staff might want to explain in a little more detail. But I guess, basically, the fact that you were descended from someone who signed a treaty doesn't necessarily mean you are a tribe.

The CHAIRMAN. I have a question here from Senator Murkowski, and I will read the question: Since 1983, the Alaska Area Office of the Bureau of Indian Affairs has requested that 33 Alaska Native villages be added to the list of tribes receiving services from the Bureau of Indian Affairs under the provisions of 25 CFR 54.6 paragraph (b). These villagers were inadvertently left off the list published in 1982. Are you aware of this problem?

Ms. **Elbert**. Yes, sir; I am.

The **Chairman**. Can you provide an explanation as to why these villages were excluded?

Ms. **Elbert**. If I remember correctly, when the list was established, there was a criteria for those tribes that were put on, or those villages that were put on the list. I am not at this moment sure I understand what that criteria was. And the tribes that were left off did not meet the criteria.

We are in the process at the present time of developing new criteria to address the question of the tribes that were left off, or the villages that were left off.

The **Chairman**. Were they inadvertently left off the list?

Ms. **Elbert**. I don't believe so. The criteria that was established at the time, they simply didn't meet it. Now, whether or not the criteria had been well thought out, I'm not sure. So what we've done, we've developed some new criteria to address the question of the ones who were left off.

The **Chairman**. So the 33 native villages were deliberately left off?

Ms. **Elbert**. I guess you might say that, since they didn't meet the criteria. But I don't think there was any design to deliberately leave them off.

The **Chairman**. Knowingly left off?

Ms. **Elbert**. I don't think there was a special effort put forth to knowingly leave them off. They simply didn't meet the criteria.

The **Chairman**. It wasn't accidental?

Ms. **Elbert**. Not that I am aware of. I wasn't around when that was all done, but I'm not aware that it was done accidentally or otherwise.

The **Chairman**. When did you begin taking steps to resolve this matter?

Ms. **Elbert**. If the request to consider including them on the list has been around for 2 or 3 years.

The **Chairman**. Five years.

Ms. **Elbert**. Five years?

The **Chairman**. When did you begin your process to resolve this matter?

Ms. **Elbert**. I believe we finally sent some suggested criteria to the Solicitor's Office the first part—the last part of last year.

The **Chairman**. It takes four years to consider this?

Ms. **Elbert**. Not if we had the staff to just concentrate on that particular issue.

The **Chairman**. How long will it take before a resolution is reached?

Ms. **Elbert**. I really couldn't say at this point. We have developed a criteria. It is under review by the Solicitor's Office, and we will have to see what kind of response we get from the Solicitor's review.

The **Chairman**. Do you think it will be this year?

Ms. **Elbert**. I really don't know. I can't speak for the Solicitor's Office.

The **Chairman**. Then I think it would be safe to tell our friends in Alaska that they will have to wait a little while longer.

Ms. **Elbert**. A little while longer, yes, sir.

The CHAIRMAN. There is no way you can speed up the process?

Ms. ELBERT. Once it gets out of our hands, Mr. Chairman, I don't have any authority to dictate to the Solicitor's Office.

The CHAIRMAN. Because, in many cases, while the waiting period is prolonged, there are men and women who are dying, and I would assume they have been waiting a long time for this recognition.

Ms. ELBERT. That is probably true.

The CHAIRMAN. I would hope that the Bureau would take that little item, into consideration and expedite it, if such is possible.

Ms. ELBERT. I will be happy to let the Solicitor's Office know that there is some priority to the question.

The CHAIRMAN. I realize that it takes some time to establish criteria, but 4 years, come now, you can do it faster than that. Don't you think so?

Ms. ELBERT. Mr. Chairman, if that's all we had to do was just do the criteria for that one particular issue, we probably could do it in less than four years.

The CHAIRMAN. I will convey your response to the Alaskan Delegation.

I have several technical questions that I would like to submit for your consideration, and if you could respond to them, I would appreciate that.

Ms. ELBERT. We would be happy to do so.

The CHAIRMAN. I would like to ask just a few for the record.

Do you have any estimate on what it costs for a petitioner to prepare the petition?

Ms. ELBERT. I believe we did a little figuring to see if we could come up with that cost, and the cost we came up with was 50 to 150 thousand per petition.

The CHAIRMAN. How many more staff would you have to add to process these petitions in a timely manner? You have said your staff was too small, and you don't have the time to do this and do that, therefore it is going to take a little while.

How many more do you have to add?

Ms. ELBERT. If we had three more teams, we could take care of the surge of petitions that have been placed on us, and then we would be within the timeframe that the regulations contain.

The CHAIRMAN. Three more teams?

Ms. ELBERT. Three more teams.

The CHAIRMAN. Have you ever requested the three more teams?

Ms. ELBERT. We have not, as I indicated in my statement, been willing to cut back on the programs that we already have to make that available.

The CHAIRMAN. No; I didn't ask you whether you were cutting back. Have you ever requested three more teams?

Ms. ELBERT. I believe we have, and I can't—I believe we have.

The CHAIRMAN. When was that? Have you requested these teams in this fiscal year?

Ms. ELBERT. No.

The CHAIRMAN. Or the last fiscal year?

Ms. ELBERT. No; I believe that is part of the discussion that's going on now within our staff, to discuss, to request three additional teams for the Acknowledgment Process.

The **Chairman**. So far as the records of this committee show, you have never requested an increase to expand the staff.

Would that be correct?

Ms. **Elbert**. The records would not show that we have requested an expansion of the staff.

The **Chairman**. Well, I would hope that if it means adding three more teams, you will let us know.

If we provided the money to get three more, would you recommend a veto?

Ms. **Elbert**. No; sir.

The **Chairman**. I have been asked by several Senators to keep the record open so that they may submit questions that they would like to ask of the Bureau. And Senator Evans wishes to make an opening statement, but he is presently on the floor participating in the debate.

I have one question here from Senator Melcher. He has asked me to read this for the record, and get a response for the record.

The landless Little Shell Tribe in Montana has been seeking recognition for more than 20 years. The tribe has no money or resources to hire experts to prepare the historical and genealogical data necessary for a petition. Recently the Native American Rights Fund took the Little Shell case.

The question is, How do you expect impoverished, non-recognized tribes to handle preparation of a petition? Is there any money available for this purpose?

Ms. **Elbert**. Not from the Bureau of Indian Affairs, Mr. Chairman. We are not authorized to give funds to tribes that are not federally recognized.

The **Chairman**. Are you authorized to provide assistance?

Ms. **Elbert**. We do provide technical assistance.

The **Chairman**. Would you be authorized to assist in the preparation of historical and genealogical data necessary for the filing of a petition?

Ms. **Elbert**. Well, the Little Shell Band is one that we have given obvious deficiencies letter to. They have responded to that, I believe, and their obvious deficiency response is now waiting for a review for adequacy. So we have worked along with them since 1985.

The **Chairman**. Well, according to this, they have been waiting for 20 years now. Well, we will do our best to give you three more teams, and, hopefully, at the next oversight hearing you can tell us that everything is clear.

Ms. **Elbert**. We will be current.

The **Chairman**. I thank you very much.

[Prepared statement of Ms. Elbert appears in appendix.]

The **Chairman**. Next we will have a panel consisting of the following: The Chairman of the Tulalip Tribes of the State of Washington, the Honorable Herman A. Williams, and the Chairperson of the Duwamish Tribe, representing the Samish Tribe, Snohomish Tribe, Snoqualmie Tribe, Steilacoom Tribe, Cowlitz Tribe and the Chinook Tribe of Washington State, the Honorable Cecile Maxwell.

Chairman **Williams**. Welcome, sir.

You may proceed, sir.

STATEMENT OF HON. HERMAN A. WILLIAMS, CHAIRMAN, TULALIP TRIBES OF WASHINGTON STATE, ACCOMPANIED BY DOUGLAS BELL, LEGAL COUNSEL, AND ROY HATCH, COUNCILMAN

Mr. WILLIAMS. Thank you, Mr. Chairman.

I have a written summary here.

At this time I would like to introduce my legal counsel, Douglas Bell, the Tulalip Tribes, and my councilman, Roy Hatch, who is here with me.

The CHAIRMAN. Do you want to sit up in the front here?

Mr. WILLIAMS. This is OK, I guess.

The CHAIRMAN. The scenery is better here.

Please proceed, sir.

Mr. WILLIAMS. I am Herman Williams, Chairman of the Tulalip Tribes of Washington.

We commend the committee for holding this hearing on the Federal Acknowledgment Process, or FAP, as it is called.

I have a written statement which I have submitted to the committee.

The CHAIRMAN. Without objection, your full statement will be made part of the record.

[Prepared statement of Mr. Williams appears in appendix.]

Mr. WILLIAMS. For the record, I wish to emphasize that the Tulalip Tribes enjoy standing as a "Federally-recognized" Indian tribe and are organized pursuant to the Indian Reorganization Act of 1934. The Tulalip Tribes have resided on the Tulalip Reservation since it was established by the 1855 Treaty of Point Elliott. We are the successors-in-interest of the Snohomish, Snoqualmie and Skykomish Tribes and other tribes and bands which signed that treaty. These tribes honored their treaty commitment and moved to the reservation as required by the terms of the treaty.

We adopted our present name, the Tulalip Tribes, after the Tulalip Bay when we organized under the Indian Reorganization Act.

Mr. Chairman, we oppose any modification of the FAP criteria that would diminish or weaken the process as a standard for acknowledgment of an Indian tribe.

The Tulalip Tribes also oppose a notion of an independent review of the FAP findings. FAP denial should be considered by the Federal courts, not some newly established entity with no standing in the Federal system.

We support adequate resources for the FAP. However, we oppose the concept of increased resources merely to accelerate the process to satisfy an impatient claimant group.

We see no problem with contracting out of certain FAP functions, as long as it's done in a manner that assures independent, unbiased results. In addition, strict conflict of interest checks and balances should be adopted and implemented.

We understand that several Indian groups are claiming that they are the treaty tribes who entered into formal treaties with the United States. What they choose to ignore is that the United States has dealt with the legal successors in interest to the treaty tribes on a government to government basis since treaty time, as has been the case at Tulalip.

At best, some individual members of these modern-day claimants might be able to trace their descendancy from the original tribal signatories of a specific treaty. Such groups should not be automatically recognized or exempt from the FAP. Their claims must be fully analyzed to determine whether or not the group meets the acknowledgment criteria.

Currently a large number of groups are petitioning for Federal recognition under FAP. Some will achieve recognition and some will not. We understand that a few of the unrecognized groups are pushing for legislative recognition. The Tulalip Tribes believe it would be highly inappropriate for Congress to confer legislative recognition upon a group that has petitioned for acknowledgment under the FAP and has been denied, the group that would already have had a full and fair opportunity to present all relevant evidence to the Bureau of Indian Affairs, the Secretary of the Interior, and the reviewing court.

The Tulalip Tribes also believe it would be inappropriate for Congress to consider extension of recognition where the tribal status of a group has been previously adjudicated by a court, with the resulting determination that the group is not an Indian tribe. We feel it is appropriate to bring these matters to the Congress' attention at this time, because we are aware that some of the groups that are seeking legislative recognition call themselves the Duwamish, Samish, Snohomish, Snoqualmie, and Steilacoom Tribes. These groups in the past have tried to intervene in the United States v. Washington litigation to attain adjudication of their fishing rights, but were denied intervention. The court determined that these groups are not tribes and are not political successors-in-interest to the tribes of the same name that signed the treaties in question.

One of the above-mentioned groups, the Samish, have also had their petition for Federal acknowledgment denied, have been denied reconsideration by the Secretary of the Interior, and have elected not to seek judicial review. They have now turned to Congress.

The Tulalip Tribes believe that Congressional intervention anywhere along the lines of the Federal Acknowledgment Process would destroy the integrity of the FAP and make it a meaningless exercise.

We urge the committee to support the continued use of the strict, time-tested FAP criteria for the achievement of Federal recognized status by claimant Indian groups.

Thank you, Mr. Chairman.

The CHAIRMAN. Ms. Maxwell.

STATEMENT OF HON. CECILE MAXWELL, CHAIRPERSON, DUWAMISH TRIBE, REPRESENTING THE CHINOOK, COWLITZ, DUWAMISH, SAMISH, SNOHOMISH, SNOQUALMIE, AND STEILACOOM TRIBES OF WASHINGTON STATE, ACCOMPANIED BY DR. WAYNE SUTTLES, RUSSELL BARSH, AND DENNIS WHITTLESEY

Ms. MAXWELL. Mr. Chairman, Senator Evans, my name is Cecile Maxwell, and I am the great great niece of Chief Seattle, of Seattle, Washington, for the Duwamish Tribe.

I want to thank you for the opportunity to come before your committee. I am here on behalf of the seven landless tribes of Western Washington, all of which are unrecognized by the Interior.

We have submitted extensive materials, which I would request be made a part of the record here today.

The CHAIRMAN. Without objection, so ordered.

[Prepared statements with attachments appear in appendix, other materials are retained in committee files.]

Ms. MAXWELL. Further, I would like to introduce the delegation which traveled with me today.

With the Chinook, it is Don Mechels, the chairman, Chuck Mechels, who is Tribal Council.

The Cowlitz, which is Marsha Williams, vice chairperson.

And joining me with the Duwamish is my Tribal Council, Frank Fowler.

Samish is Margaret Greene, Chairperson; Mary Hansen, Tribal Council Secretary; Mac Orieo, Tribal Council.

Snohomish Tribe, Bob Woodley, Chairman; Virginia Ryan, Tribal Council.

With the Snoqualmies, we have their Chief, Ernie Bass, and the entire Tribal Council.

With the Steilacoom, Joan Ortez, Chairperson.

With me today are Dr. Wayne Suttles, and two attorneys, Russell Barsh and Dennis Whittlesey.

Each of us is a treaty tribe and each has lost their Federal status without a hearing at the Interior or even explanation. We are here because our treaty status apparently was revoked by the Interior in the 1970's, and our Federal services were cut off. And again, we were not consulted.

This was done by the Interior, not by the Congress.

And I find it interesting that the Interior prepared statement for this hearing addresses the same manner of dealing with tribes.

The prepared statement says a treaty is binding only on the day it is signed, and that Interior has the right to decide whether tribes should be terminated. If the tribe doesn't like it, it can go back to Interior and seek acknowledgment. This is what they did to us. This makes the Interior the judge, the jury, the court of appeal, and the supreme court.

We thought only the Congress could abrogate treaties and terminate tribes. And this is why we are here for your help.

Our complaint goes beyond the Interior's termination of our tribes. We believe that BAR is applying incorrect criteria to these tribes.

At this table is the Tulalip Chairman. His prepared statement endorses the criteria proposed by the American Indian Policy Review Commission.

In addition, the Interior just mentioned these same criteria with approval.

Mr. Chairman, I have that report with me, and I would agree with my old friend, Herman Williams, on this issue. If those criteria were followed, we would be recognized today. The final report, volume 1, page 482, identifies the seven criteria and it propose—that propose that recognition will be extended to these tribes, which satisfies any of them.

Our tribe satisfies them all.

On page 482, it says, and I will quote [Reading.]: "The Indian group that has had treaty relationship with the United States, individual States, or pre-existing colonial or territorial government, treaty relationship shall include any formal relationship based on the Government acknowledgment of Indian groups separate and—— * * *"

It is often said that if we were tribes we would be on reservations. Our written material reports how these tribes either were told to move the reservation far from their traditional land, or were turned away when their members did seek places on designated reservations. Our tribes maintained their identities and their traditional practices, despite their non-reservation residence.

And we are here in force to plead our case. We need the Congress' assistance to help regain our status. The BAR process is not appropriate for our case, since our treaties were not abrogated, and they should be honored.

With this, I would welcome your questions, and with the committee's permission, we would like to involve Dr. Suttle, I mean Mr. Barsh and Mr. Whittlesey to help me to respond where their expertise would be useful.

I would like to thank you, Mr. Chairman and Mr. Evans.

The CHAIRMAN. Thank you very much.

Ms. Maxwell, throughout your testimony you spoke of "my tribe, my tribe." You are speaking of all?

Ms. MAXWELL. Yes, I am. But I can respond to my tribe.

The CHAIRMAN. When you said "my tribe meets all of the criteria," that means the seven tribes meet all the criteria?

Ms. MAXWELL. Yes; they do.

The CHAIRMAN. And what reason did the Bureau of Indian Affairs give you when they took you off the list?

Ms. MAXWELL. They said nothing.

The CHAIRMAN. You were notified, weren't you?

Ms. MAXWELL. No, no.

The CHAIRMAN. Do you want to answer the questions? I think you may be more knowledgeable. Can you tell us?

Mr. BARSH. Thank you, Mr. Chairman.

These tribes—I am Russell Barsh, co-counsel. These tribes were, in fact, receiving services, being treated in most respects as recognized tribes, as the Federal record will show, and working, in fact, with the Bureau of Indian Affairs at the Western Washington Agency to clarify their status and assure that they enjoyed all of their benefits, including treaty benefits, until the middle of 1974, when the Interior and Justice Department took the position, in the pending fishing rights litigation, in the Northwest, the so-called Judge Boldt case, or *U.S.* v. *Washington,* as officially titled, they took the position that these tribes were not then and never had been recognized. So the tribes discovered that their continued treaty status was at stake only when they were opposed in court by the United States in a case which the United States had previously told them it was going to assist them to participate in.

Since then, they have continuously sought to clarify their status, to regain the treaty status which they previously had, and which they had exercised even to the extent of the treaty fishery through the 1950's and 1960's. They petitioned the BAR process, the Federal Acknowledgment Process, under the assurance that this would be an appropriate way of resolving their dispute over the loss of their treaty status in 1974.

The **Chairman**. Are the members of these seven tribes receiving any Federal services?

Ms. **Maxwell**. Yes, they are.

The **Chairman**. Under what auspices, the Tulalip?

Ms. **Maxwell**. No.

The **Chairman**. Directly from the Bureau of Indian Affairs?

Ms. **Maxwell**. No; from ANA we get some Indian health services.

The **Chairman**. Are any of the members living on the reservation?

Ms. **Maxwell**. Well, speaking personally, yes, some of our relatives are living on the Tulalip Reservation. In fact, Mr. Chairman, I was born on that reservation, but that doesn't make me a Tulalip. I am Duwamish.

The **Chairman**. Are the members of the seven tribes receiving services from the Tulalip Tribe?

Ms. **Maxwell**. No.

The **Chairman**. Do you participate in the election of officers?

Ms. **Maxwell**. No.

The **Chairman**. In the Tulalip Reservation?

Ms. **Maxwell**. No.

The **Chairman**. Is that correct, Mr. Chairman?

Mr. **Williams**. That is correct. They do not participate. We have some members who came down uninvited and wanted to reside upon the Tulalip Reservation. Snoqualmies we are talking about literally.

The **Chairman**. Can any member of these tribes move into the reservation and build a residence?

Mr. **Williams**. I believe that, in the case here, you would have, the Snohomish and Snoqualmie might be able to make application and go through the process as you are going here. We have criteria that you must meet to come into the tribe thereupon.

But then again, I think you're talking about when the treaty was adopted. At the time the treaty was signed it talked about you must come thereon to live upon, and declare residency. And the choice was, in some cases, to not declare residence there and go upriver. In our case, in our constitution and bylaws, there must be a residency clause and you must come in and abide thereupon to meet the requirements. If you are delineated from the Point Elliott Treaty, by blood, you might be able to make application.

The other tribes, I don't see that privilege.

The **Chairman**. If I were a Squamish Indian and I desired to move into your reservation to live there, would I be permitted?

Mr. **Williams**. The Snoqualmies, did you say?

The **Chairman**. Oh, let's say I am a member of the Samish Tribe, and I wanted to live in your reservation, would you permit me to live there?

Mr. **Williams**. Well, I would say we would accept an application from you, on the individual, and then we would due process the application to determine whether blood of an Indian Nation was there or you were appointed, a signatory treaty, of which, you know, Samish was. But again, it's the person that must meet the qualification.

The CHAIRMAN. If you approved my application, then I would receive all the benefits that your——

Mr. WILLIAMS. You would be entitled to those benefits that our tribal members receive.

The CHAIRMAN. And I would be permitted to participate in all of the activities?

Mr. WILLIAMS. Yes.

The CHAIRMAN. How many of the members of the seven tribes are in that category?

Mr. WILLIAMS. There is only two. And, you know, I'm making reference to here in this case would be the Snohomish and the Snoqualmie. Because as I made in my initial statement, they are successor heirs in, you know, all the cases we've prevailed and the Judge Boldt decision, we prevailed in the Ninth Circuit Court of Appeals, and for the BI process, that we are the successor-in-interest.

The CHAIRMAN. Only two members of these tribes have been accepted by your tribe?

Mr. WILLIAMS. No; we have a number of the original Snohomish Band, if you're talking about. I'm talking about this case here, we have the seven bands and groups, and the only two that I can make reference to at this time that we might consider would be Snohomish and Snoqualmie. The rest don't——

The CHAIRMAN. The rest—you shrugged. What do you mean? You don't consider them Indians?

Mr. WILLIAMS. Well, no, they are Indians. I've got—they're groups. The Cowlitz and Chinook are way down river. The Steilacoom are down in a town, away from us a great distance. And the Duwamish were, you know, initially in around Seattle. And so we're talking about successors and heirs of interest to the Snohomish and Snoqualmie, which we have established by court.

The CHAIRMAN. If these seven tribes made appropriate application with the Bureau and were approved, would you object to their recognition?

Mr. WILLIAMS. Yes, yes.

The CHAIRMAN. You would.

Mr. WILLIAMS. Yes.

The CHAIRMAN. Can you briefly tell us why?

Mr. WILLIAMS. I believe, if you'll look at, when I made reference to the Judge Boldt decision and the Ninth Circuit Court of Appeals, we established ourself and prevailed there that we were successors-in-interest to these two tribes, and the other tribes may attempt or want to intervene and become recognized. When you become a tribe, it does not give you immunity from legal impediments. We expended a great deal of money to protect our interest in this case. One, trying to prevail as Boldt decision tribe, fishing on the water, and one against a neighboring tribe, we prevailed again in the Ninth Circuit Court of Appeals.

We see this as another means of trying to bring another forum for a Judge Boldt decision to be again adjudicated. It leaves us no room for going back, because wants to recognize a subsidiary group.

They are certainly going to have to share something there someplace. And when the Boldt decision was put down, it established there were a certain number of groups and tribes who were entitled to fish therein. And I see this as a means, you know, it will open up, a means of trying to adjudicate that whole process all over again, which we are not in favor of.

The CHAIRMAN. Does membership in your tribe depend upon blood quantum?

Mr. WILLIAMS. Yes.

The CHAIRMAN. What is your blood quantum?

Mr. WILLIAMS. Well, I don't believe we have really established a blood quantum at this time.

The CHAIRMAN. You said there is a blood quantum. What is the percentage?

Mr. WILLIAMS. The blood quantum right now is a quarter of blood.

The CHAIRMAN. Senator Evans?

Senator EVANS. Let me try to start from the very beginning and get the nomenclature right. At least in all the material we have here, I think that it is put probably correctly when it talks about the Tulalip Tribes.

Is there such a thing as a Tulalip Tribe, in the singular?

Mr. WILLIAMS. In a singular?

Senator EVANS. Yes.

Mr. WILLIAMS. I believe so. When we look at it from the standpoint, when you talk about successors-in-interest too.

Senator EVANS. I'm not talking about successors-in-interest. I'm talking about those who signed the treaty.

Mr. WILLIAMS. Well, when we talk about, we have to try to establish, but by the IRA Act of 1934, when we did adopt the constitution and bylaws, we were then constitute, and all of those bands and groups that thereupon had qualified at that time became the Tulalip Tribes.

Senator EVANS. That's what you call yourself, the Tulalip Tribes, not the Tulalip Tribe?

Mr. WILLIAMS. Yes.

Senator EVANS. So it is a conglomeration of other tribes?

Mr. WILLIAMS. Yes, yes.

Senator EVANS. And the Tulalips are not mentioned by name in any of the treaties, is that not correct?

Mr. WILLIAMS. That's right, by name, that name.

Senator EVANS. So the constituent tribes that make up the Tulalip Tribes are essentially those which were mentioned in the treaty?

Mr. WILLIAMS. Yes, until we get—it's hard to accept that statement, because the Tulalip Reservation was established, you know, there was those tribes thereupon West of the Cascades, in that area, most of them probably reside on that reservation. I believe that Tulalip was the first one to be established. And those groups must come and reside upon that reservation. And, yes, there were a number of tribes.

Senator EVANS. Including essentially all or most of those who are now petitioning for separate recognition?

Mr. **Williams**. In most cases, I couldn't support that. I would say that I'm talking about the Snohomish, the Snoqualmie, and there was a band called Skokomish where now it is extinct. And I do know that at one time there were members of the Swinomish and Lummis, that we give them land on the reservation at one time. But now they have chose to, you know, ally themselves with another tribe.

Senator **Evans**. Ms. Maxwell, at the time of the treaty, let's take the Samish as an example. Were they considered, and did they sign the treaty as a separate tribe, or were they subsidiary of the Lummis or some other tribe?

Ms. **Maxwell**. I don't believe they were banded with the Lummis, no.

Senator **Evans**. Were they separate signators to the treaty, as the Samish Tribe?

Mr. **Whittlesey**. Senator, my name is Dennis Whittlesey, and the treaty clearly has independent and identifiable Samish signatories.

Senator **Evans**. That's a little bit different from recognition of the tribe, however. You can have signators, but were the signators on behalf of the tribe as the tribe?

Mr. **Whittlesey**. I apologize for the terminology. The Samish Tribe was a party to the treaty as a tribe, identified as such. The Samish Tribe was represented at the treaty signing by several designated representatives who signed for the Samish Tribe. I apologize.

Senator **Evans**. Were the Samish considered at that time a subgroup of the Lummis, or what is the historical nature of all this?

Mr. **Barsh**. Senator, Russell Barsh. If I may answer that, I think that it is very clear that they were considered separate, and it was the original plan that the treaty commission would establish a separate reservation for them at that time.

Senator **Evans**. What is the—again trying to build them historically for all of this—at the time of the treaty signing, would you agree with the representative from the Tulalip that one of the requirements of the treaty was to move to certain prescribed reservations?

Mr. **Barsh**. The treaty had a two-step procedure. The first was the establishment of what were originally called temporary reservations in the areas of each of the original tribes, the aboriginal group. And then contemplated a second stage removal of all the tribes to a general reservation, which was to be at the place where Tulalip now lies.

Policy decisions of two natures were made following the signatures and ratification of the treaty. The first was to try to move everyone more quickly, and some of the temporary reservations, such as the Snohomish one, were not set aside at all, even temporarily. Then, when it was discovered that there was not enough land at Tulalip for any but a fraction of more than 3,400 Indians who came down there looking for land, the decision was taken to make the temporary reservations already set aside permanent, and that's where we get the system we now have in Western Washington of the Tulalip Reservation as a surviving general reservation, and then many what were originally temporary reservations which became permanent ones for particular groups.

The problem with the landless groups that are here today, they were ones which should have had temporary reservations, would have become permanent reservations, but those particular plots of land were never set aside. And when they went to Tulalip looking for land, those that did, they found that the roughly 140 quarter sections that had been set aside for Indians at Tulalip were already all alloted out, there was no room left.

Senator EVANS. How many of the reservations currently in Western Washington were—well, let's narrow it down a little bit. I think we are really talking about the Puget Sound area.

How many of the current reservations in the Puget Sound area were actually specified by one or another of the treaties that were signed, as being permanent reservations?

Mr. BARSH. I am going to have to hazard a little bit of thinking it through as I speak. Most of the reservations, as they now stand, were largely established by Executive Orders under provisions in the treaties which indicated, generally, that reservations would be set aside for particular groups, sometimes didn't specify exactly where or how much.

For example, in the——

Senator EVANS. Whether they would be permanent or not?

Mr. BARSH. Or whether they would be permanent, exactly, Senator.

So that, really, there was a period of considerable confusion following ratification of the treaty, both by officers of the United States and by the Indians, about exactly where everyone was to go and how much land was to be set aside.

Senator EVANS. Mr. Williams, as I understand your statement, you are basically saying that, at the time of the treaty, you became successors-in-interest to the other tribes as they moved to the reservation and coalesced under this combined fragile arrangement. Is that essentially correct?

Mr. WILLIAMS. That is true, yes.

Senator EVANS. And do I understand you are further saying that anyone who at that time failed to move to the reservation lost forever any rights?

Mr. WILLIAMS. I would have to concur there, because I am saying, I am Snohomish, on the rolls, and my family were full blood at the time, and there are some Snoqualmies thereupon also that decided to remain there on the reservation, to establish that government base. And those that chose not to ally themselves in that instance, you know, went and settled at other places.

Senator EVANS. Would you go over that again? Are you saying that some stayed where?

Mr. WILLIAMS. On the Tulalip.

Senator EVANS. On the Tulalip.

Mr. WILLIAMS. On the Tulalip Reservation, because we were, at that time, a mixed group of Indian bands and tribes, because that was why the first set aside, that was the first Indian school that was established there.

Senator EVANS. Now, what is the current status, then, of those separate tribes who moved to the Tulalip Reservation? Have they retained, and do they retain their separate identity and government today or is that all assumed under the Tulalip?

Mr. **Williams**. All assumed under the Tulalip program.

Senator **Evans**. So, in essence, they have, for all practical purposes, lost their identity as a separate tribe?

Mr. **Williams**. Yes.

Senator **Evans**. So if the tribes that had come to the Tulalip Reservation were clearly tribes to begin with, recognized as such, signators to the treaty, but were asked to come to a separate reservation, and if those who chose not to come have lost all their rights, and those who chose to come had lost their tribal identities, haven't we, for all practical purposes, eliminated tribes?

Mr. **Williams**. In some cases, it could be the case.

Senator **Evans**. Is that appropriate?

Mr. **Williams**. In essence, I would say no at the time, but I look at it this way also. These groups trying to seek recognition, we have some people that were left off our roles, you know, have the blood lines, they can't even make it into our tribe. But, as I said to Mr. Inouye, these two groups that were—I'm making reference to the Snohomish and the Snoqualmie, if they chose to make application, we would certainly look at it and see whether they qualify under the factors that we carry.

Senator **Evans**. You're talking about some now who can't qualify. Who would they be, what tribe, or what——

Mr. **Williams**. They were members of the Snohomish Tribe and Snoqualmie that are, you know, their parents may be on the role, or some of their relatives may be on the role, but they can't qualify under the criteria.

Senator **Evans**. Why not?

Mr. **Williams**. They don't qualify under the criteria we set aside.

Senator **Evans**. What is that?

Mr. **Williams**. There's a residency clause, you know, you be a member of the tribe, 1934 roles, and you be born to a member of the tribe at that time. And you must reside thereupon. We have a residency clause.

Senator **Evans**. Let's see if I get this straight. Let's just assume for the moment that there are five entities. I'm not quite sure how many there are. But let's just assume that there are five entities, each one of which has 20 percent of the population, so they are all equal in population, nobody has a majority. Somewhere in there a tribal leadership is selected, and it can be selected in a lot of different ways, but let's just assume for the moment that three tribes got together and decided that they wanted to achieve the leadership of that tribe and set the requirement, and they were successful in doing so over the real opposition of the two enterprises that were there and part of the reservation.

Now, at that point, for whatever purposes, the leadership decided that they would establish their own idea of what constituted membership, in a way that might be more favorable to some tribes than the others.

Aren't you getting pretty close to a chance that people are going to be left without any representation at all, that shouldn't those separate tribes really be, in essence, the judges of their own membership and their own tribal records, and their own knowledge, own backgrounds, own history?

Mr. WILLIAMS. No; I don't believe so, because I go back again to the adoption of the constitution and bylaws that we live by, were ratified and issued. That governs how we would operate, and all of those various tribes that were thereupon those roles, yes, have membership. We have not delineated by class, for instance, there are a certain number of Snohomish, a certain number of Snoqualmie, and a certain number of others. We do not do it that way. We have, again, what we call a political process that governs how we would operate under that constitution and bylaws.

So it is not a freedom of choice to just determine you want a new chief, it's not that way. We govern almost like the Constitution of the United States.

Senator EVANS. Do you know how many generations we have had since 1855, 130 years, assuming 25 to 30 years to a generation? We're probably into the fourth or fifth generation, at least.

Should the fourth and fifth generation descendants of people who made the decision 130 years ago not to go on the reservation be denied forever after? In other words, should the sins of the fathers be descended on to the sons and daughters and grandsons and granddaughters of people forever after?

Mr. WILLIAMS. Yes; I believe so. Because, you know, the criteria calls for recognition for certain criteria, and, unfortunately, I'm one, I could say that because I'm one of those that, you know, they chose to remain there. And I couldn't speak for those, you know, that chose not to remain.

Senator EVANS. Could you have something to do with remaining there?

Mr. WILLIAMS. No; because it was decisions that my family had made, you know, and thereupon.

Senator EVANS. Ms. Maxwell, what is your view as to how we should make determinations, even if we get by hurdle number one, and decide that there is some definitive prize that we are attempting to recognize. How should we make a determination as to who constitutes members?

Does that apply to leadership under whatever circumstances they want—we are really talking now about treaties and the relationship and potential services and privileges, and all that sort of thing.

Should we be looking at a consistent requirement or measurement of what constitutes potentially the member of the tribe, how much blood relationship, or whatever else?

Ms. MAXWELL. Well, I will speak for the Duwamish Tribe. Ours is the descendancy. If they can prove their descendancy, then they are members of our tribe. And each individual tribe have their own criteria how they will be members of that tribe.

Senator EVANS. So there is no, there would be no particular blood quantum, just relating to, distantly?

Ms. MAXWELL. I believe that some of these tribes do have blood quantum.

Senator EVANS. But do you think—should we have a consistent requirement across the board, across the country, for—in the nation, either by blood quantum or by just descendancy. However we do it, should it be uniform or for each tribe to make their own decisions as to what constitutes a member?

Ms. **Maxwell**. I think each tribe should determine that decision. I think when you mess around with their Indian sovereignty, which we all exercise, it is their determination and their destiny how they are going to, you know, determine their destiny.

Senator **Evans**. Let's turn finally, Mr. Chairman, to—I may have another question for the record—but let's turn from historic to practically. I suspect that so many are in this audience and there is such a contest going on because in 1974 a very substantial and valuable right was reasserted clearly through the Boldt Decision. Prior to that time, if we had had the same question in front of this Congress prior to 1974, there might not have been quite so much interest.

So, isn't it true—I would like comment from each of you—isn't this one of the very important things to take? There is a big economic interest at stake.

Ms. **Maxwell**. I believe that *U.S.* v. *Washington* should not determine Federal recognition for these tribes. I think it should be the Congress that determines. We were not terminated. So I don't believe that decision—yes, I agree with you, Mr. Evans, again and again and again, and, you know, it all comes down to the fishing rights. I don't know why we can't just drop that issue and forget about *U.S.* v. *Washington*. This is, you know, we're talking about treaties. So why doesn't the Congress just agree, do they sign these treaties with these tribes.

Senator **Evans**. Mr. Williams?

Mr. **Williams**. Yes; I concur, it probably is a fishing issue as of the Boldt Decision. And I made my first remarks to Mr. Chairman here that, when you start talking about economic values, then certainly fishing becomes one of the top issues as of the Boldt Decision. And I see that Tulalip Tribes and other tribes signatory to the treaty that are on established reservations. My own have expended a great deal of money to protect those rights, and we, amongst ourselves, begin to argue those rights and fight them amongst ourselves, and in some cases we prevail over others, which is not a happy situation. But then again, that's what you have to do to protect your rights.

And I see, again, share those by Congressional act, have to determine how are you going to give me due process for my tribe when we begin to want to share that fishing right again under another form for the Boldt Decision question. As I said, Mr. Chairman, I can't go along with it to see the Boldt Decision come to surface again. It has been very painful.

Senator **Evans**. Indeed, it is.

If we were to get to a point where there was—do the benefits of the Boldt Decision and the fishing rights that are now carried on by members of the Tulalip Tribes, are those benefits, do they accrue to tribal members on a share and share alike basis?

Mr. **Williams**. It is individual choice. The tribes have these rights given to them and thereupon to tribal members the privilege of sharing those rights, and the individuals will partake and seek a license from the tribe to go fish in areas that we have adjudicated.

Senator **Evans**. And does the tribe charge something?

Mr. **Williams**. Yes; we have a fee that they pay for a license, so to speak, or a permit, and then they are charged a certain tax so that we can carry on and enforce, you know, our policy against the fishing rights.

Senator **Evans**. Is it just a tax, or is some of it based on a share of the amount of revenue that comes to a certain——

Mr. **Williams**. It's based upon, partially on the revenue. It is a percentage of your gross.

Senator **Evans**. And that revenue, then, accrues to the benefit of all members of the tribe?

Mr. **Williams**. It could. Yes, it could.

Senator **Evans**. But there is no distinction between how it's divided among the Snoqualmies or any of the other constituent elements. It's all——

Mr. **Williams**. No; it's——

Senator **Evans** [continuing]. As if there were a single Tulalip Tribe, is that correct?

Mr. **Williams**. Yes; that's correct. It's based upon the fact, if you want to partake and participate in this activity, that's your privilege, and thereupon you will share in what we call the *Boldt* Decision. We do not allocate any proportion out to anybody, like we have a lot of non-members, and I would daresay 40 or 50 percent of them do not partake in this activity, so, therefore, they are not reaping any benefits.

Senator **Evans**. What is the requirement for membership in the Tulalip? Is there a blood requirement?

Mr. **Williams**. Yes; we go with blood, quarter three, must be signatory to the Point Elliott Treaty, and meet a lot of the residency requirements that we have that are set down by committee.

Senator **Evans**. It seems to me there are lots of complexities. If we were to say these other tribes should have recognition and, by gaining recognition, share in a fixed right, which is the Boldt Decision right, then those who enjoy it now share it to a somewhat lesser degree, if there are differences in membership requirement, and if one tribe says just descendancy, the other tribe says quarter blood, it seems to me you get into quite a race as to how many people would qualify, and the larger the tribe the larger the share in this economic benefit. And that's why I asked the question about some kind of standard for membership.

Mr. **Williams**. We concur, and that's where we see, you know, a big problem rising from that standpoint.

Senator **Evans**. Thank you, Mr. Chairman.

I may have some other questions for the record.

The **Chairman**. Thank you very much. The staff has developed several questions we would like to submit to you and your attorneys. Obviously, this is a very complex matter, which involves history, genealogy, et cetera, and we can't expect to make any decision at this time. But I can assure you that this committee will study your testimony and your responses to our questions very carefully, and, if necessary, act upon them.

Ms. **Maxwell**. Mr. Chairman, we would like to make one more last statement.

The **Chairman**. Please do.

Mr. **Whittlesey**. May it please the Chairman, I would like to respond in response to Senator Evans' questioning of Mr. Williams, Chairman Williams.

The Supreme Court has specifically addressed the question of tribes in Western Washington, not resident on reservations when there was an ostensible reservation residence requirement in a treaty. And, on two separate occasions, in the case of *United States* v. *Payne,* decided in 1924, and again *United States* v. *Halbert,* in 1931, the Supreme Court affirmatively stated that residence for these Western Washington tribes was not a requirement to enjoy reservation status. And specifically a question was whether tribes had the right to be alloted, or individual members of off-reservation tribes had rights to be alloted on reservations, even though they were not actually resident on the reservation. And the court rejected the residence requirement out of hand, in two separate, independent decisions, in 1924 and again in 1931.

So the notion that the Tulalip Tribe would advance that those tribes that elected not to go to the reservation lost their tribal status has simply been rejected by the courts.

Senator **Evans**. It seems to me—are you sure you made a correct statement when you said "those tribes" who chose not to go to the reservation? Is it more accurately, in some cases, at least, those portions of tribes who, you know—the tribe itself or some portion of the tribe may have gone to the reservation, some others—in other words, the tribe slip, some did, some didn't?

Mr. **Whittlesey**. No, Senator. In the case of *United States* v. *Payne,* it was a case of Quileutes attempting to gain allotments on the Quinault Reservation, which, as you know, was a 220,000-acre executive order reservation, which was established for a number of tribal groups. And the argument was put forth, in the case of Payne, that the Quileutes had their own reservation, the tribe was firmly ensconced there, Quileute Indians were not living at Quinault, on the Quinault Reservation, therefore they had no entitlement to the allotment process. That was absolutely rejected by the Supreme Court.

Similarly, a follow-up to that, again dealing with the Quinault Reservation——

Senator **Evans**. On what basis? If there was a reservation, the Quileute Reservation established and the Quinault Reservation was established, you are saying that the Quileutes had the benefit of both?

Mr. **Whittlesey**. The Quileute Reserve is a very small tract of land.

Senator **Evans**. I understand it is.

Mr. **Whittlesey**. And, as the Ninth Circuit reaffirmed only 2 years ago in the case of *Williams* v. *Watt,* although the Quileutes indeed have a separate independent executive order reservation, because the Quinault Reservation was established for eight distinct tribal groups, the Quileutes, as a tribe, have tribal rights at the Quinault Reservation, which was an extension of *United States.* v. *Payne,* when the court said although Quileute Indians don't live at Quinault Reservation, and indeed they have their own independent, very small reservation, they still have an absolute federal right to allotments at Quinault, because the reservation was created for, among others, Quileute Tribe.

Ms. MAXWELL. Thank you, Mr. Chairman.

The CHAIRMAN. I thank you very much, and, as I indicated, we will give this matter our very serious consideration.

Our next panel consists of the following: The Honorable Ileen Sylvester, Vice Chairman of the Cook Inlet Tribal Council and Bristol Native Association, of Dillingham, Alaska; the Honorable Adolph Dial, Chairman of the Lumbee Tribe of Pembroke, North Carolina, accompanied by Ms. Arlina Locklear, Esquire; Ms. Faith Roessel, Esquire, representing the Native American Rights Fund of Washington, DC; and Mr. Allogan Slagle, Esquire, representing the California Indian Legal Services and the National Indian Lutheran Board of Washington, DC.

Vice Chairman Sylvester, would you care to begin?

STATEMENT OF HON. ILEEN SYLVESTER, VICE CHAIRMAN, COOK INLET TRIBAL COUNCIL, AND TRIBAL OPERATIONS SPECIALIST, BRISTOL BAY NATIVE ASSOCIATION, DILLINGHAM, AK

Ms. SYLVESTER. Thank you, Mr. Chairman and members of the committee.

I will summarize my testimony, but I would like to submit my written testimony for the record.

The CHAIRMAN. Your full statement will be made part of the record.

Ms. SYLVESTER. Thank you.

I appreciate the opportunity to testify today on the Federal Acknowledgment Process as it relates to Alaska Native Villages. I am the vice chairman of the Cook Inlet Tribal Council, and I am also employed as a Tribal Operations Specialist for the Bristol Bay Native Association. Both organizations are regional non-profit corporations which provide a variety of services to Alaska Native villages within their respective regions.

I will speak primarily of two villages: Koliganek and Ninilchik, which are traditional Native villages in the Bristol Bay and Cook Inlet regions which were mistakenly left off the list of federally recognized tribes first published by BIA in the early 1980's. On behalf of these villages, I am asking for your help in correcting the Bureau's list without making the villages go through the cumbersome and expensive Federal acknowledgment process.

While I am most familiar with Koliganek and Ninilchik, I would like to stress that they are not unique. Statewide, more than 30 villages were left off the Interior Department's list of recognized tribes, apparently at random. Ten of the twelve regions of our State have villages in this situation. Despite years of effort by village advocates, the Interior Department has been unable to provide any explanation why these villages were treated differently than villages that made the list, and has failed to offer any solution for them, other than to go through the FAP at a cost of thousands of dollars and untold headaches. This is despite recent admission by the Interior Department that it made an administrative error in leaving the villages off the list.

Koliganek is a Yupik Eskimo village on the Nushagak River in the Bristol Bay region. My maternal family lives in Koliganek and most of my summers growing up were spent there helping my grandmother and my mother put up fish for the winter.

The Russian Orthodox Saint Herman's Seminary in Kodiak, Alaska, have documented in their historical archives the following information about church history in Koliganek:

The Russian Orthodox parish in Old Koliganek was started in 1870. The Church was named Saint Yako. The priest that officiated at that time was Father Vassily.

Koliganek had its first one-room BIA school in 1952 for grades one through eight. My grandfather, Charlie Nelson, the Koliganek Traditional Council President, was the second school teacher and taught until 1967 when the State of Alaska took over the Koliganek school system.

Koliganek has about 170 residents, and like most of the villages in the Bristol Bay region, the only government in Koliganek is the Traditional Tribal Council. Until fiscal year 1987, this tribal council administered BIA grants. Then, for reasons they don't understand, the 104(a) grant had to be channeled through the village ANCSA corporation.

Ninilchik, like Koliganek, was recognized by Congress in the Alaska Native Claims Settlement Act and has been a populated Native village throughout historic times. It is located on the east side of Cook Inlet on the Kenai Peninsula. An Indian village has existed since 1000 B.C. according to archaeological findings and documented historical existence since 1840 through the Russian Orthodox Church archives.

While each village is a distinct entity in terms of history and kinship, for Federal recognition purposes, it is impossible to distinguish these two villages from neighboring villages which were included on the Interior Department's list.

The consequences to the villages of not being recognized are severe. The most obvious ones are economic. Since Koliganek and Ninilchik are not on the list of federally recognized tribes, they are not eligible for BIA grants which are the mainstay of Alaska Native governments and service programs. While these grants can, technically, be obtained by the ANCSA village corporations, those corporations are for-profit businesses and are not equipped to provide governmental or social services.

Another concern is that Federal programs serving Native American individuals are starting to require membership in federally recognized tribes. The new Indian Health Service regulations linking eligibility for medical care to tribal enrollment is one example, and the new eligibility requirements for BIA higher education scholarships are another. Thus the elders of Koliganek are facing the prospect of their children and grandchildren being deprived of benefits which the children of New Stuyahok, which is just a village about 40 miles south on the river, receive. And this just really isn't fair because there is no way to distinguish that village from the people that live in that other village, or even in Ekwok.

Long-term, the very existence of the village will be at stake as families seek to enroll in neighboring communities to preserve their benefits. In a small village, like Koliganek, the loss of just a few families would decrease the school population to the point where the regional school district would have to close the school. If the school closes, other families would be forced to leave and the village would become an empty shell populated only by the old.

Going through the Federal Acknowledgment Process, as the Interior Department would require, is not a practical answer nor a fair one. The FAP petitioning process requires, among other things, proof of continued existence as a tribal community and as a political entity from historical times to the present. While we have no doubt that Koliganek and Ninilchik could meet this burden of proof, to do so would require considerable work, including expert anthropological and historical research.

Another burden imposed by the FAP is the requirement that a current tribal membership roll be submitted with the petition. This will require defining tribal membership for the first time and an expensive and time-consuming enrollment process which would have to be complete before the FAP petition is filed.

There is no sense in making Koliganek, Ninilchik and similarly situated villages go through this elaborate process to correct a mistake by the Interior Department. The FAP regulations are not designed or intended to apply to tribes which have in fact been recognized historically but were merely left off a list. There is no question on the part of anyone whether the villages consist of indigenous Alaska Native people. The FAP, as stated in 25 CFR 83.3(b). does not apply to Indian communities "already acknowledged as such or already receiving services from the Bureau of Indian Affairs."

An original version of the list of recognized Alaska Native villages was developed for publication by the Alaska office of the BIA in 1982. This list included Koliganek and Ninilchik and most, if not all, of the other tribes, but when the final version was published by the BIA's Washington office more than 30 villages were dropped off. Because of the similarity in name between many Alaska Native villages, it is our belief, and that of some BIA officials, that some villages, at least, were left off because of a clerical error or a mistaken belief that they were listed twice. For example, Kaltag, an omitted village, is similar in name to Kalskag, which is on the list. Koliganek is similar to Kongiganak. It is easy to see how clerical errors could be made in duplicating a list of some 200 villages, most of them not having English names.

That the omissions were purely administrative error was borne out when an attorney for RuralCap, a rural advocacy organization, submitted a Freedom of Information Act request for the BIA files pertaining to the list of recognized Alaska Native villages. These file documents do not contain any decisional documents relating to the omitted villages, or anything else showing why they were left off the list.

A letter sent to RuralCap from the Secretary of Interior's office in April of this year acknowledged that the Bureau's list "may contain some administrative errors," and said that Interior is "trying to address that very issue and correct the listing." 'However, we have since been informed by BIA officials in Alaska that the Interior Department is unlikely to simply correct the list, although it may adopt simplified FAP procedures for use by Alaska villages.

I do have a copy of that letter for the record.

That response would be inadequate. The Bureau circulated a draft document entitled "Procedures for Alaska Tribal Entities to Receive Federal Recognition" in early 1987, and those proposed procedures were nearly as burdensome and complex as the existing FAP. Even if the new process costs a village only thousands of dollars instead of hundreds of thousands that the existing FAP could, it is still too much. It is fundamentally unfair to impose special burdens on Koliganek and Ninilchik to solve a problem they did not cause.

We are asking for your help in convincing the BIA to add our villages and the other omitted villages to the BIA's list. This is the only fair way to solve the problem.

Thank you, on behalf of Koliganek and Ninilchik and the other Alaskan villages for your time in hearing this very urgent matter.

[Prepared testimony of Ms. Sylvester appears in appendix.]

The CHAIRMAN. Ms. Sylvester, did your two tribes meet the criteria that the area office used in determining what villages should be on the list?

Ms. SYLVESTER. Yes, we did. I believe the criteria that they used for that was this 25 CFR 83.3(b), and that says that any Indian village already acknowledged as such or already receiving services from BIA would qualify. And both villages are recognized under ANCSA. Both villages have received and contracted services with BIA, and do still give a tribal resolution to Bristol Bay Native Association and Cook Inlet Tribal Council, which are non-profit arms of our regional corporation, to provide services under BIA.

The CHAIRMAN. I am certain you were here when Ms. Elbert testified?

Ms. SYLVESTER. Yes; I was.

The CHAIRMAN. She said very clearly that it was not by inadvertence or mistake, but it was done knowingly.

Ms. SYLVESTER. OK. Well, if it was done knowingly, we have never received anything from them saying why we were not included on that list. We have copies of letters, and we have a copy of the list from BIA Alaska office showing the villages listed given to Washington, DC, to be on that list. And apparently, what we feel is that someone in Washington made an error when they typed that list up. And we do have copies of those for the record.

The CHAIRMAN. She maintains that you were left off the list because you did not meet the criteria, but you didn't agree with her.

Ms. SYLVESTER. OK. We have never received anything from them saying why we were left off that list. Our village is no different than Ekwok, Stuyahok, Portage Creek, which all are recognized and do all receive services from BIA and do have tribal designation.

The CHAIRMAN. And it is your contention that they were left off because of either clerical error or mistaken belief that they were already listed?

Ms. SYLVESTER. That is correct.

The CHAIRMAN. Do you have any proof to demonstrate that this was so?

Ms. SYLVESTER. No real proof. You can't really get BIA to say anything in writing. We do have copies of letters that were sent to

Jeanie Kennedy, Rural Alaska Community Action Program, from the Acting Assistant Secretary of Indian Affairs, Mr. Ragsdale, saying that this list for Alaska might include some administrative errors and they were looking into it.

So this is something that has come from their office. And we do have copies of memos from the BIA Alaska Office to Washington, DC, requesting that they add our villages to the list. And there is no opposition to this in our State at all.

The CHAIRMAN. Although I consider my name to be very simple and easy to spell, I know that there are many Americans who find it extremely difficult to spell my name.

Ms. SYLVESTER. Right.

The CHAIRMAN. So I can understand how Koliganek and Kongiganak can be mixed up.

Ms. SYLVESTER. Very easily.

The CHAIRMAN. Otherwise, you believe that you have met all the requirements and criteria?

Ms. SYLVESTER. We certainly have. I do have relatives that are in Ekwok, down the river about 40 miles, that are a recognized tribe, and we are no different.

The CHAIRMAN. You believe that, to be required to go through this process is just going to cost you extra money?

Ms. SYLVESTER. Well, it is going to cost money that we don't have. In Koliganek and any of the other villages it's a subsistence life style. One of our elders that was planning to come down here and testify, because the date was changed, decided not to come because that's when we start putting up fish for the winter.

The CHAIRMAN. We will once again call upon the BIA to study your testimony and respond to that.

Ms. SYLVESTER. Thank you.

The CHAIRMAN. I thank you very much.

May I now call on Chairman Dial.

STATEMENT OF ADOLPH DIAL, PROFESSOR, PEMBROKE STATE UNIVERSITY, REPRESENTING THE LUMBEE TRIBE, PEMBROKE, NC, ACCOMPANIED BY ARLINDA LOCKLEAR, ESQ., TRIBAL ATTORNEY

Ms. LOCKLEAR. If I may, Mr. Chairman, my name is Arlina Locklear, Tribal Attorney for the Lumbee Tribe, and also enrolled member of the tribe. I would like to introduce our tribal delegation before Dr. Dial makes his statement.

The CHAIRMAN. Fine.

Ms. LOCKLEAR. We have with us today Ruth Locklear, who is the Director of our Tribal Enrollment Office. We also have, to my right at the end of the table we have Cynthia Hunt Locklear, who is a paralegal with the Legal Services Office, which actually prepared the petition, and we have Dr. Dial. Dr. Dial is Chairman of the American Indian Studies at Pembroke State University, and our Tribal Council asked Dr. Dial to appear today to make the statement on behalf of the tribe.

The CHAIRMAN. Thank you very much.

Mr. DIAL. Mr. Chairman and members of the committee, I am gratified by your interest in the Federal Acknowledgment Process and appreciate the opportunity to testify on that subject. I am Adolph Dial, an enrolled member of the Lumbee Tribe of North Carolina and Chairman of the American Indian Studies Department at Pembroke State University. The Lumbee tribal council asked me to appear at this hearing to express our views on the acknowledgment process.

As many of you know, the Lumbee Tribe is the largest non-federally recognized tribe in the entire United States. Task Force Ten of the American Indian Policy Review Commission estimated our number to be between 31 and 40 thousand, approximately five times the size of the next largest group identified by the Task Force. We are also one of the most persistent tribes in the country. I would like to say that my grandfather, W.L. Moore, and my grandfather, Marcus Dial, they were working on this issue here in Washington 100 years ago. So this is an appropriate time that we appear.

Since at least 1888, the Lumbee people have sought Federal recognition, then from Congress, and since from both Congress and the Department of the Interior. Even though we have been recognized by the State of North Carolina as an Indian tribe since 1885, our efforts to obtain Federal recognition have thus far failed.

The closest the Lumbee Tribe has come to Federal recognition was with the passage by Congress of the Lumbee Act in 1956. I might add here that that did not give us national recognition, but when we put the plan, two years later, on the run we received world recognition.

In its recitals, the bill acknowledged the Indian ancestry of the Lumbees and the continuing existence of the tribe since earliest white contact.

The purpose of the bill was to recognize the Lumbee Tribe, but at the urging of the Department of the Interior, the bill was amended before passage to name the tribe as Lumbee but to preclude recognition. The language added to the bill reads, "Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians." Because of that language, the Lumbee bill does not constitute legal recognition of the tribe.

Consequently, the Lumbee Tribe began work on a petition for Federal acknowledgment under the Interior's regulation shortly after the regulations were finalized in 1978. Those regulations are extremely rigorous and require that petitioning groups carry the burden of demonstrating seven factors to obtain Federal acknowledgment. Essentially, a petitioning tribe must document its Indian ancestry and continuous existence as a separate political entity since the time of first white contact. Failure to document those facts for any reason means that the group will be turned down by the BIA.

The work on the Lumbee Petition for Federal Acknowledgment began eight years ago. It was done jointly by our tribal council, which assumed responsibility for tribal enrollment, and Lumbee River Legal Services, which supervised the research and writing of the petition.

May I deviate right here and say that this was under the direction of the late Julian Pierce, who was assassinated.

Over the years, 15 staff people and 12 consultants have worked on our petition. The final product responds to each of the seven criteria listed in the recognition regulations and runs over 400 pages in length, supported by 530 documents and 34 reels of newspaper clippings.

We are especially proud of our final roll, which includes only individuals who can show descendancy from a base roll composed of census and other documents dating from 1882 to 1910, and who maintain contact with the tribe. Any question regarding the eligibility of an individual to enroll is referred to our Elders Committee, which is composed of knowledgeable older people throughout the community. Approximately 35,000 people have applied for and been enrolled through this process. The petition, roll, and supporting documentation were filed with the Branch of Acknowledgment and Research on December 17, 1987.

Even though we have waited more than one hundred years for Federal recognition, and even though we have fully met the heavy burden placed upon us by the recognition regulations, we must now wait literally years before our petition will be considered. The Lumbee Tribe is frustrated and very much discouraged. We urge the committee to seriously consider proposals we would like to make and those made by others today to ease the burden and the backlog that Indians face in the petitioning process.

The burden of acknowledgment regulations. May I speak to this for a few minutes.

I wish to emphasize at the outset that we do not dispute the general proposition that tribal existence must be demonstrated before recognition is extended to an Indian group. Neither do we dispute the relevancy of the seven criteria used in the regulations to determine tribal existence. However, we disagree strongly with the detail of proof required by the regulations in demonstrating tribal existence. As they are applied by the Branch of Acknowledgment and Research, the regulations unfairly impose very difficult and sometimes impossible burdens on petitioning groups. This proof problem is also related to the lengthy delay petitioners face in obtaining review of their petition. It takes a long time to prepare a petition with the detail required by the Branch and it takes a long time for the Branch to review all that detail in processing the petition. As a result, petitions can be more speedily processed unless the petitions themselves are streamlined. For that reason, I'd like to make some observations on the burden placed on tribes in preparing their petitions first, even though our petition is now complete. You have it.

First, the regulations require that petitioning groups prove their existence from historical times. Historical is defined in the regulations as dating back to the earliest documented contact between the aboriginal tribe and non-Indians, either the United States, colonial or territorial governments, or foreign governments from which the United States acquired territory. In the case of many eastern tribes, first white contact occurred during the sixteenth century, even though contact thereafter may have been casual and sporadic until permanent white settlements were established. It is simply unfair to require tribes to demonstrate a continuous political existence from before the time when a white government existed in the area with which the tribe has maintained political relations. The definition of historical should be modified so that the tribe's burden of proving its existence begins with the founding of a permanent non-Indian settlement in the area rather than the first white contact.

Second, the regulations require that petitioning groups prove their existence on a substantially continuous basis. Continuously is defined by the regulations as extending from generation to generation throughout a tribe's history essentially without interruption that sometimes becomes very difficult. In other words, tribes must document their existence every 30 years. Oftentimes, documents may not exist for periods longer than 30 years due to a State policy of assimilation, or geographic isolation of the Indian group, or some other reason having no relation to whether or not the group functioned as an Indian tribe. Nonetheless, if the group's existence cannot be documented every thirty years, the group's petition will be denied. Tribes should not be penalized for the failure or refusal of the dominant society to record a particular tribe's activity at all times. This definition should be changed to allow for longer gaps in documentation under certain circumstances.

Third, we are concerned about the level of proof necessary in establishing the existence of a community as required. The regulations define a community as "people living within such a reasonable proximity as to allow group interaction and the maintenance of tribal relations." But the regulations give no guidance as to how much proof or what kind of proof of interaction is required. Because of the absence of explicit standards on this point, each petitioning group can only guess whether it has adequately proved to be a community. And judged from letters of obvious deficiency done for different petitions, the amount of evidence required varies from case to case for no apparent reason.

In the case of Lumbee, the question here is not how much evidence is available; the amount of evidence is almost beyond knowledge. The question is now how much evidence do we need to produce in order to satisfy the criterion. Because of the size of our community, we are limited by the availability of resources to commit to the effort rather than by the availability of evidence. We believe we have plainly demonstrated the existence of an Indian community in our petition, but until we receive our obvious deficiency review by the Branch, we do not know whether more evidence will be required.

These concerns—the definitions of historical, continuously and political authority, and the amount of evidence necessary to prove community—are shared by members of petitioning groups. This I have learned. We have discussed these concerns with them, the Native American Rights Fund, and Jack Campisi, an anthropologist in the field. We have all agreed upon certain changes that should be made in the regulations to solve these problems. Mr. Campisi includes the proposed revisions to the regulations in his testimony and commends those changes to the committee's consideration.

Finally, I'd like to comment on a concern that applies to all the criteria and that is who evaluates whether a petitioning group has demonstrated the criteria. The Branch of Acknowledgment and Research is a branch division of the Bureau of Indian Affairs and uses Indian preference in hiring. Of course, Indian preference is available only to members of federally recognized tribes. This almost guarantees that the merits of petitions for recognition will be determined by member of presently recognized tribes. I repeat, presently recognized tribes. We believe that this creates a potential conflict of interest. It is a political fact of life that presently recognized tribes sometimes oppose the recognition of non-federally recognized tribes. Task Force Ten of the American Indian Policy Review Commission noted this dilemma. It noted this dilemma when it observed: "Already recognized tribes have accepted this 'small pie' theory and have presented Interior with another political problem: The recognized tribes do not want additions to the list if it means they will have difficulty getting the funds they need." May I suggest sometime that we cook a bigger pie.

For this reason, Task Force Ten recommended that a special office independent from the Bureau of Indian Affairs be created to review applications for Federal recognition. The creation of a special office to process petitions with its own line item appropriations has much to recommend it. At a minimum, an exception to the Bureau's hiring preference for members of federally recognized tribes should be made for positions at the Branch of Acknowledgment and Research. While we believe the present staff there has made every effort to fairly evaluate petitions on their own merits, we also believe that the staff must be increased. I repeat, must be increased. We are entitled to some assurance that new staff members will have no tribal biases against non-federally recognized Indian people.

Now I wish to speak a minute on the backlog in the petitioning process.

We filed our petition for Federal acknowledgment about six months ago. We were originally told to expect obvious deficiency review by mid-summer. We are now told that our petition will be reviewed for obvious deficiencies in October or November, or nearly a year after we filed the petition. In the meantime, our contracts with experts who assisted in preparing the petition have expired. Julian Pierce, our tribal attorney who supervised the preparation of the petition, as I mentioned a minute ago, was assassinated March the 26th, 1988. And by the time we receive our obvious deficiency review, the material in our petition describing the contemporary Lumbee community will already be out of date. As a result, we will certainly have to update the description of the contemporary community in response to the obvious deficiency letter, but our ability to do so has been impaired by intervening events and the passage of time.

What is worse, we calculate that under the Branch's present work schedule, active consideration of our petition is 5 to 6 years away. We have been told that once active consideration of our petition begins, the Branch staff will stop work on all other petitions, placing them even farther behind in their work. For that reason, the Branch will understandably be reluctant to begin active consideration of our petition, possibly delaying active consideration even longer. Once active consideration does begin, we can only guess how long it will take. Generally, it takes the Branch 1 to 1½ years to consider a petition. But the Lumbee Tribe is more than three times the size of the next largest tribe that has filed a fully documented petition. So we can see here that the process grows to be longer and longer and longer. The work on genealogy alone on the Lumbees will probably take 2 years, given the detail review that the Branch undertakes. Consequently, we expect full consideration of the Lumbee petition to be completed sometime in 1996. You can pass or play.

Even then, the process is not over. At that point, the Branch's recommended preliminary finding must be reviewed by the Solicitor's Office and the Assistant Secretary for Indian Affairs before it is published. Some people believe that the Lumbee Act passed by Congress in 1956 is legislation prohibiting the Federal relationship within the meaning of the recognition regulations. The Solicitor's Office at the Department of the Interior has never taken a position on this issue. If the Solicitor's Office agrees with that interpretation of the Lumbee Act when asked to review the recommended preliminary finding, then all the years of work and delay by the Lumbee Tribe and the Branch will have been for naught. At that point, our only recourse for obtaining Federal recognition will be by the Congress of the United States.

The Lumbee people cannot in good faith be asked by the United States to abide such a process with the possibility of being told in the end that we don't fall within the scope of the regulations in any event. Our situation is unique because of our history, and because of further delays we will face due to our size and the risk of an adverse determination from the Solicitor's Office on the Lumbee Act.

So you can see here that we face perhaps some problems that the average tribe would not face.

But our situation is not different in nature from that of other tribes involved in the process. Every petitioning tribe faces many years of delay in receiving active consideration and even longer in obtaining a final result on their petition. There is no doubt that some of the tribes with fully documented petitions already on file will still be awaiting a final determination on their petition come the twenty-first century. I repeat, the twenty-first century. This situation is absolutely intolerable.

This situation exists, we believe, for two reasons. First, the recognition regulations require such detailed and heavily documented petitions, which are, in turn, reviewed in detail by the Branch staff, that the process of necessity is very lengthy. As I have already stated, part of the solution lies in sensible revisions, sensible revisions to the regulations that will reduce the work in preparing or reviewing petitions. When you stop to think about this process, it seems that it is almost purposely set up to deny even the best.

Second, the Administration places no priority at all on this issue and the effort is, consequently, severely underfunded. The present staff at the Branch appears to be conscientious in their work, but they are so overburdened with work as to be very nearly paralyzed.

Under the circumstances, major restructuring of the recognition process is required to put it back on track. Tinkering around the edges will no longer suffice. We suggest that the committee consider these options: creation of a special office dedicated solely to processing petitions for recognition that is independent of the BIA, with a separate line item in the subject, and not subject to Indian preference, at least as presently limited to members of federally recognized tribes; tripling the professional staff of the acknowledgment office, with specific provisions made for training of new staff members to ensure consistency and integrity in results; imposition of deadlines on the obvious deficiency process, 2 months within the receipt of a documented petition, and on active consideration of the petition, 6 months from the receipt of the response to the obvious deficiency review; automatically entitled to Federal recognition that applies when the recognition office misses one of its deadlines in processing an application for recognition by more than 4 weeks.

These options are a dramatic departure from the present system used to process petitions for Federal acknowledgment, but the near breakdown of the present system calls for a dramatic departure. The issue of recognition for non-federally recognized peoples is a long-standing one that will not go away. And I began by saying that we were here 100 years ago, in a different way, but still it was a matter of pride. They were seeking recognition.

Unless some needed changes are made soon, more and more non-federally recognized groups will turn to Congress for the recognition they have long sought and deserve.

The Lumbee people sincerely appreciate this committee's active oversight on the process and trust that some sorely needed changes will result.

The CHAIRMAN. Thank you very much, Chairman Dial.

You have indicated in your testimony that the State of North Carolina has recognized the Lumbees as an Indian tribe since 1885.

Mr. DIAL. Yes.

The CHAIRMAN. Now, does that State recognition provide you with any benefits?

Mr. DIAL. With any what?

The CHAIRMAN. Benefits.

Mr. DIAL. Yes.

The CHAIRMAN. What sort of benefits?

Mr. DIAL. Well, presently we have the Department of Indian Affairs in Raleigh, with a budget, and they do much work throughout the State. We also have something like four or five hundred acres of land and a big lake that is owned by the State, and this will, when it's finished, will be Indian center with perhaps, oh, funding eventually maybe fifty to a hundred million dollars.

The CHAIRMAN. Does the Lumbee, as a tribe, own any real estate?

Mr. DIAL. And also, the State of North Carolina provides State scholarship for Indians in the State of North Carolina, and the Lumbee receive those scholarship funds.

And coming to your last question there, I believe you said, do we own land. Our tribe does own a small portion of land. The State owns the four or five hundred acres that I spoke of. Our Lumbee Tribe, in Pembroke, they own something like 15 acres. Many of our people are farmers, and almost all of our rural people are farmers, and they enjoy it because they farm, and some of them farm as sharecroppers, and many do own their own individual farms.

And to answer your question, the tribe does not own, you know, hundreds and thousands of acres, say, like many of the tribes of the Southwest.

The CHAIRMAN. The Lumbee Act of 1956 acknowledged the Lumbee as Indians, and also recognized and acknowledged your continued existence since your first contact with white people, but did not recognize you as a tribe. Is that correct?

Mr. DIAL. Not by BIA standards.

The CHAIRMAN. In your definition of a member of the Lumbee Tribe, do you have any blood quantum?

Mr. DIAL. We do not, but I think we have something that is just as good. We know our people, and we are Indians because we have always been Indians. I said at the outset that my grandfathers were here a hundred years ago, and I know that, you see. I grew up as an Indian. I attended an all-Indian school. I attended an all-Indian church. I came out of World War II with six battle stars and applied for admission at the University of North Carolina, and I was denied because I was Indian, and that was in the law.

And I had graduated from Pembroke State College for Indians. To me, you know, this is very significant.

Ms. LOCKLEAR. May I add a comment to Mr. Adolph's answer on that question, Mr. Chairman?

The CHAIRMAN. Please do.

Ms. LOCKLEAR. We do have very specific membership criteria that we use in the enrollment process as part of preparing the petition for recognition itself. We have formed a base roll which consists of Federal and State documents identifying our people as Indians, from the time period between 1882 and 1910. These include, primarily, Federal census rolls and school records maintained by the State of North Carolina, since we did have a separate school system only for Indian children in the county.

Our membership criteria requires that, to be eligible for membership, an applicant must demonstrate descendancy from an individual who appears on one of those base rolls. Although there is no separate blood quantum requirement itself, there is definitely a descendancy requirement that the eligibility is determined by.

The CHAIRMAN. Thank you.

I notice Mr. George Roth in the audience.

What is the present status of the Lumbee application or petition, Mr. Roth?

Mr. ROTH. We have their petition and it is awaiting an obvious deficiency review. At this point we would not have a specific time when we expect we could get to that.

The CHAIRMAN. Will it be in the next century, as the Professor indicated?

Mr. ROTH. I certainly hope so. I certainly hope we can get to it within the year.

The CHAIRMAN. Will you keep this committee apprised of the progress?

Mr. ROTH. Yes, we will.

The CHAIRMAN. I thank you very much, Dr. Dial.

[Prepared statement of Mr. Dial appears in the appendix.]

The CHAIRMAN. We will now call on Ms. Roessel.

STATEMENT OF FAITH R. ROESSEL, STAFF ATTORNEY, NATIVE AMERICAN RIGHTS FUND

Ms. ROESSEL. Mr. Chairman, I appreciate the opportunity to be here on behalf of the Native American Rights Fund. NARF is a non-profit law firm with its main office in Boulder, Colorado, an office in Anchorage, Alaska, and an office here in Washington, DC. I am a staff attorney with the Washington, D.C., office and am a member of the Navajo Tribe. I will summarize my remarks and submit in the record written statement.

NARF has testified at the last two Congressional oversight hearings on this topic, the first in 1980, and the second in 1983. We believe we are a unique law firm in terms of the extensive experience we have in representing non-recognized Indian tribes.

At the time that NARF presented testimony in 1983, there were four main issues that we focused on. Timely review of petitions; expense of petitions. Fair burden of proof; and increased funding for the BAR. Those four issues are important to look at because they provide a benchmark in terms of seeing what progress, if any, there has been. Very simply, the conclusion is that we really have not seen any progress. In fact, the federal acknowledgment system is becoming worse.

Currently, NARF represents seven petitioning Indian tribes. One petitioner is under active status; that is the Southern Paiute of Utah. We have two petitioners awaiting active status. Senator Melcher had referred earlier to one, the Little Shell of Montana, and the second is the Houma of Louisiana.

Finally, we have four other petitioners who are in preparation, which means that the research is currently being conducted. These petitioning tribes are the Mashpee of Massachusetts; the Shinnecock of New York; the Schaghticoke of Connecticut, and the Florida Tribe of Eastern Creek.

I would like to just digress very briefly and say that NARF is especially interested in Senator Murkowski's question posed to the Bureau of Indian affairs regarding the Alaska Native villages that supposedly were inadvertently left off the BIA list of Indian tribes. Because we have an office in Anchorage and because we work very directly with the Native villages, NARF can certainly testify to the problems this omission has created. We endorse reinstating those Native Villages that were left off the list.

In terms of the first issue that NARF in 1983 as well as in 1980 testified to before the committee, nothing has changed regarding the paramount problem of the lack of timeliness in reviewing these petitions.

I would like to make the point, though, that if there are any proposed procedures to expedite the process they should not be at the expense of the petitioner. I think some people are afraid to impose time requirements in the process because they argue that there would be a lack of substantive review. But certainly, right now the only time limit that we have in the process is once a petition reaches active consideration, then the clock starts ticking. I would propose, and I think certainly the testimony you have heard from the Indian tribes such as Lumbee, support the concept to have the clock start at the time the petition is *received* by the Branch of Acknowledgment and Research. By doing so we would have a self-regulating system so that the petitioner, as well as the staff, are kept aware and abreast of the petition as it moves through the process.

At the same time, however, we do not want to see an elimination of many of the procedural safeguards that are in the petitioning process, for example, the obvious deficiency letter.

The second issue NARF testified to in 1983 and which is equally relevant now is the increasing expense of recognition petitions. I am pleased to hear that Mrs. Elbert said she would like to see an increase in her BAR staff. At the last two hearings, we recommended that the staff be doubled. Certainly right now it should be at least tripled since it has been 5 years later.

The Administration has said that they want to avoid a rigid formula in terms of evaluating the petitions. NARF had recommended previously and again brings to the committee's attention, that a great deal of the expense involved in preparing these petitions is the lack of clear and workable definitions within the petitioning process.

Tied in with the enormous expense of petitions is the third issue which is a fair burden of proof. I would say we really have a moving target in terms of the burden of proof that tribes have to meet. We are looking at words such as historical, continuously, political influence, and contemporary community, and in each situation it is a matter of myself, as a lawyer, trying to evaluate what does that mean for our tribes in terms of what they have to describe to the Branch of Acknowledgment and Research.

For example, the Houma Community in Louisiana. There we spent an extra $11,000 just trying to meet the definition of community for the BAR, and that required two anthropologists to spend a month's worth of research out in the field as well as the time preparing the report, as well as the time meeting with the BAR staff.

Really, ambiguity costs money, and in terms of the amount of money, it is increasing and not declining. This leads me to the fourth area of NARF's recommendation previously, and again that we bring to the committee today, that is the expenditure of Federal resources throughout this whole recognition process. You have, for instance, one agency, the Administration for Native Americans, funding the research for the petitioner. When Mrs. Elbert was responding to a question from you as to what funding exists for a petitioning tribe from the BIA, she said really there was none. But I would like to elaborate and say that the Administration for Native Americans does provide status clarification grants for these non-recognized tribes, and it is their sole means of being able to bring a petition before the BAR.

On the other hand, you have the BAR reviewing these petitions, so you have an ANA grantee who may be jeopardized if the BAR is delinquent in their review. Again, by way of example, with the Houma Nation in Louisiana, they have an ANA grant. They have submitted their petition. They received an OD letter from the Bureau. They have responded to it. And now they are waiting. Their ANA grant may be jeopardized because we're not sure when, and if in this century, the BAR will be asking for more information from that tribe, at which time they may be without any funding resources because their sole means is by the ANA grant.

Somehow, there needs to be more coordination between the Bureau and between the ANA so that an ANA grantee and a petitioner, they are one and the same, are not jeopardized.

Finally, I would propose that legislation is an alternative that this committee should consider. It is not a new suggestion. As has been mentioned previously, the American Policy Review Commission had proposed setting up a separate office, independent from the BIA. We feel that this merits some consideration. And although I don't have the detailed outline of any type of legislation, I believe it is imperative that there be Congressional interest and leadership shown on this issue.

I understand, and I think there is a general awareness that the Administration is proposing regulations, but this may not be enough, and it may not be timely. Essentially we are dealing with Indian communities out there that really have no means to continue. They rely on their ANA grants and they wait. There needs to be some way to expedite the process to help them.

In closing, I ask that that the record be kept open. The Houma Nation of Louisiana was unable to be put on this witness list, and they have remarks that they have prepared that we'd like to forward to the committee. Also we are aware that Dr. Jack Campisi will be submitting testimony as well.

The CHAIRMAN. The record will be kept open to receive the statements from the Houma and Dr. Campisi.

[Prepared statement of Ms. Roessel appears in appendix.]

The CHAIRMAN. You spoke of ambiguity. Has the Bureau made any attempt to clarify these words and phrases that you cited, historical, continuous existence, political influence, et cetera?

Ms. ROESSEL. The very simple answer is no, as far as we are concerned. What happens is that there is, for example, a definition of community in the regulation, and it just says, "any people living within such a reasonable proximity as to allow group interaction and the maintenance of tribal relations."

Now, we took that information and went through the Houma petition, and presented the information to the BAR, and in our obvious deficiency letter in response to that petition, the BAR told us that to define a Houma community we would need to do an ethnographic study. Because we were looking at precedent and that is the only way we are able to piece together what is the burden of proof, no one up until that time had been required to do an ethnographic study.

So each time you have a successful petition—and I would note that NARF has, of the seven successful petitions we have worked on three of them, they were the Gay Head, the Tunica-Biloxi, and the Poarch Band Creek—it is your only means of finding out what the criteria is. We have specific language to recommend. But that is really the problem, that it is not a workable definition.

The CHAIRMAN. Has the court ever defined these words?

Ms. ROESSEL. Not that I am aware of in terms of the context of a recognition petition. I would defer to Arlinda Locklear, if she is aware of any, either. There has been no litigation as far as we know.

The **Chairman**. I would be interested in seeing your recommendation for legislative changes, and if you would submit it to us, I can assure you that we will give it a hard look.

Ms. Roessel. We appreciate that, Mr. Chairman.

The **Chairman**. Thank you very much.

Ms. **Roessel**. Thank you.

The **Chairman**. And now I will call upon Mr. Allogan Slagle of the California Indian Legal Services.

STATEMENT OF ALLOGAN SLAGLE, ESQ., CALIFORNIA INDIAN LEGAL SERVICES AND THE NATIONAL INDIAN LUTHERAN BOARD, WASHINGTON, DC

Mr. Slagle. Thank you, Mr. Chairman. I am very honored to testify before the Senate Select Committee regarding the problems of Federal acknowledgment of unrecognized Indian tribes. I am Allogan Slagle. I speak on behalf of the Evangelical Lutheran Church in America, the Lutheran Office for Government Affairs here in Washington, and on behalf of the Association for Non-Federally Recognized Tribes of California. I also speak on behalf of the tribes and bands of unrecognized Indians I am aiding in the process of status clarification. I supplied a list of these to committee staff in requesting the opportunity to testify. That list is being updated as I get more requests.

Briefly, I would like to reflect the views that we share with a number of other groups, organizations, individuals that have contacted me in my office over the last several years, and actually right up until this date, and I would like the opportunity to submit additional documents as appropriate or at your request.

There has been, again, a significant backlog in the processing of petitions, and we do strongly support the Senate Select Committee in any effort to assure that appropriate funding and staffing levels are provided to the Acknowledgment Branch.

Second, we are concerned that the burden of preparing petitions and pressing on with the effort of meeting the requirements of the Federal regulations on acknowledgment, as the BIA has interpreted them, is terrible on the tribes and on those who volunteer services and resources to carry on the work, as well as on those who are paid consultants. Association for American Indian Affairs and other groups and organizations in the private sector are also striving to find ways to meet the needs of petitioning groups, with the cooperation of scholars, Dr. Jack Campisi, Anthony Paredes, and others, as well as students, foundations, Indian communities, and they need support to meet the challenge. There just is not adequate funding, even with the amount of concern and interest that there is, that has been expressed, to meet these challenges.

Third, in imposing very heavy burdens of proof on petitioning tribes, the U.S. Government assures failure of their cause, or at very least, the protracted delay of any justice, which is in itself a denial of justice. Indeed, the burden of carrying out the process created in the 25 Code of Federal Regulations Section 83 in 1978 is unsupportable by any Indian group I have encountered in the absence of much donated time, effort and financial resources, even with ANA grants. During the subsequent review process, tribes very often are unable to meet the financial burden of carrying on. No matter how fair the BIA/BAR staff attempts to be, no matter how they try to see to it that their decisions reflect a common standard, the perception of many tribes is that there are inequities in the way cases are decided and in the way the requirements are enforced. Documentation efforts seem to be feeding endless demands. The regulations, as interpreted on a case-by-case basis, nonetheless seem to require that non-recognized Indian groups carry a greater burden to prove political continuity and legitimacy than many federally-recognized tribes, even in the immediate neighborhood, have had to do historically.

Past social statements of the Evangelical Lutheran Church in America's predecessor church bodies, as well as the National Council of Churches, Indian Lutheran Board, and other interested religious organizations, have supported the recognition of Indian tribal sovereignty and federal acknowledgment for those who have not yet been recognized. Speaking on behalf of all the people I represent here, we support the idea of assembling a group of interested parties and representatives of recognized and non-recognized tribes and organizations to devise a fair system which, while assuring that only deserving groups are recognized, assures that the process is fair, is cost-effective from the side of both petitioning groups and the Federal Government in the short and long run, and is faster. Too often, I have seen community leaders sapped of their strength to do other essential business in the effort to see the petitioning process to the end. I have mourned elders of some of my client tribes who worked and worried with these efforts until they were incapacitated, ill or dead. The petitioning process should not cost more effort than it is finally worth to the people to whom it means so much. Often I have had to make judgment calls in what kind of research I do and when, in order to get to vital resources.

The Hayfork Norelmuk Band of Wintu met on May 2, 1987, at Hayfork High School, Trinity County, California, to review and discuss the completed draft of their petition, which I had been preparing for over 1 year. On May 4, 1987, Gracie McKibbon, daughter of John Doctor, niece of "Whiskey" Billy George, and herself the most important living source of information for our purposes, the grand matriarch of the traditional Norelmuk Indians, passed away at a rest home on the Hupa Reservation, satisfied that she had held out to the end to do her work of carrying on her culture until the work of securing her tribe's future was, in her mind, near completion. She knew what we were doing. We were going to have a birthday party for her the following Sunday if she had lived. She had granted interviews on her culture to Cora Dubois and Erminie Voegelin in the 1930's and to Harvey Pitkin and Alice Schlichter of U.C. Berkeley as recently as 1984, and had continued to supply much valuable advice and information.

In such cases, the work of the ethnographer is not salvage, but redemptive ethnography.

There are many very competent scholars and very generous individuals, students who have put in a great deal of time in working with us on these petitions, the ones I have been working on. I've been in contact with over 20 groups in California and other States, and have tried to supply whatever resources were possible or available to help them just to get started, just to decide whether they could go through the process, could make it.

I am working with 14, now 15, in California, and since 1985, I have submitted petitions on behalf of: the Tolowa Nation, Del Norte County; and the Yokayo Tribe in Mendocino County, California. And I've been struck by several things. Requiring the evidence of: past treaties or agreements; or of intergovernmental relations with any sovereign, including those that the United States has allowed to engage in such direct relations; evidence of descendancy from recognized Indian communities; evidence of collective property ownership and use; and evidence of ongoing community activities and relations are appropriate tests for acknowledgment. But aggressive and invasive efforts, in effect, to find lapses somewhere in a community's self-documentation are a waste and a shame.

Legislative recognition should be made available more readily where appropriate when in the presence of an uncomplicated case, and the United States should have to prove a case against recognition once the group has made its threshold case, providing review in a timely manner.

Groups that can demonstrate ongoing community life, even with fluctuations in the apparent continuous existence of some governmental regime in a conventional sense, should be freed from the burden of proving that they have enjoyed political continuity in a strict sense that was undoubtedly alien to many Indian tribes in pre-contact times, in any event.

Tribes are expected, today, by implication, to demonstrate that from earliest times that, not only have they had no breaks in continuous political activity, but that they have had exceptional standards and available facilities for maintaining essential records of any and all such activity.

To hinge the success or failure of a petition on communication between the majority of a tribe living at the old homesite and a minority of people who may work at least part time in local towns or industrial sites, because there's no work available near home, strikes tribes as a bit strange. This sort of information required of the tribes apparently must be reported for all years of the tribe's period of contacts with non-Indians.

Indian people, who often lack the educational attainment of non-Indian neighbors, or the resources to do such recordkeeping, may find it virtually impossible to dredge up this kind of information, and tribes cannot help thinking that the Bureau is asking highly invasive questions to increase the burden to the point that it cannot be met any more. No tribe has the equivalent of an FBI, and some feel that this is what they are being expected to provide. Tribal members may balk at supplying detailed information about what often turns out to be very private comings and goings to anyone, and their tribal governments may lack the authority to require members to confess all about whom they communicate with, and on what basis, in the community, and when and why, particularly when it involves close cultural matters, religious matters, and the like.

Many tribes lack the resources to maintain, safely and securely, even the most rudimentary information. Even their reliance on church and court records is risky. Tribes are also requested to supply copies of books, letters, scholars' notes, records which are difficult or impossible or improper to supply, in their view, or in their consultants' view. Whether or not archives refuse to allow them to be xeroxed, or so forth, it may be difficult to secure appropriate documents; or when the tribe goes back to copy them they are "not there."

In one case, I arrived at a county courthouse to request certain court documents about 10 years old that were of great concern to the tribe's history and demonstrated continuous activity, only to learn that those records had not been microfilmed, by oversight, and that the original documents had been scheduled for destruction that week. The same tribe's church records, housed in the nearby town, went up in flames years ago, as did their local tribal Indian school's records, when that building burned. The effort the B.A.R. has called for such tribes could require total participation and education of all the members in order to accumulate the requested information, leaving no gaps, as I understand the requirements, of more than about 30 years.

Non-recognized tribes would like to know why they are required to supply information useful only to Federal agencies, in their view, to justify refusal to recognize them, when their members are struggling to survive day by day. They would like to know why they are required to supply information which no recognized tribe has had to supply in order to continue to be federally recognized. They would like to know why, if they and all other tribes do retain sovereignty, that no other kind of local government is required to provide such documentation to the United States in order to be recognized as a local government. Their perception is that the Federal Acknowledgment Process, as administered under the present system, is gradually becoming a systematic method of raising the requirements each time a case goes by until no off-reservation community can meet the burdens. Then the community can be silenced, as far as the U.S. Government record is concerned.

Most of the California native population died in the latter part of the last century; but many of their communities, though in many cases unrecognized, survive. As I noted, in March 1988, to the United Nations Human Rights Commission meeting in Geneva, reporting the situation of these non-federally recognized tribes, "the result of truly irremediable damage is silence." The error in the unbridled exercise of power by the United States, in refusing to hear their pleas, or in requiring them to scream to the day they die, is the reduction of these militarily conquered peoples' circumstances to the point that they are no longer heard, regardless of their efforts to be heard. Genuine evil does not lie in competition and conquest by means of published and accepted rules, but in the elimination of populations and their sovereignty regardless of the rules. To create, or to implement rules to ensure that silence is simply evil (James Carse, *Finite and Indefinite Games,* 1986).

And, on behalf of the Evangelical Lutheran Church in America, and the Association for Non-Federally Recognized Tribes of California, the individual tribes I represent, and myself, I would like to thank you for this opportunity to address you. We offer these comments with the hope they may prove of some assistance in your deliberations, and hope to assist you further in your effort to reform the process of acknowledgment.

[Prepared statement of Mr. Slagle appears in appendix.]

The CHAIRMAN. In your work, have you noticed any perceptible difference in the processing time and the attitudes before and after the Boldt Decision of 1974?

Mr. SLAGLE. I have heard this, and I know a number of tribes that have the strong sense that there are protracted delays, perhaps due to factors that they don't understand or don't have complete information about, that they can't fully document. They can't document the reasons that they are getting so much resistance.

The CHAIRMAN. What you are testifying is that, if the Indian group has limited resources, the process is an impossible one?

Mr. SLAGLE. It may very well be. The people who would be most reliable as witnesses, the most sure sources, the most likely to carry on to the end of it, to be able to respond, to request more information, may very well be dead.

The CHAIRMAN. I thank you very much, Mr. Slagle, and if we may, I would like to call for a short recess for five minutes.

[Recess.]

The CHAIRMAN. Our final panel consists of Dr. Raymond Fogelson and Dr. Joseph Jorgensen, of the American Anthropological Association of Washington, DC.

Gentlemen, I thank you very much for your patience in waiting this afternoon, and look forward to your testimony.

Doctor Fogelson.

STATEMENTS OF RAYMOND FOGELSON AND JOSEPH G. JORGENSEN AND AMERICAN ANTHROPOLOGICAL ASSOCIATION, WASHINGTON, DC

Mr. FOGELSON. Thank you, Senator Inouye, and particularly members of the committee. I know it has been a long afternoon, and I'll try to be brief.

The process of Federal Acknowledgment of Indian tribes confronts us with serious moral and practical problems. The procedures have proven unwieldy, expensive, and, as I shall argue, often inappropriate.

Many groups of descendants of the First Americans are being unduly delayed in their efforts to attain Federal recognition, and some may have been, or will be, denied such recognition because of overly stringent applications of inappropriate criteria of evaluation.

The problems are urgent. Without a more expeditious and equitable handling of petitions, many unrecognized tribes will suffer from inadequate health care, diminished educational opportunities, and consignment to a permanent socio-economic underclass. I think we can and we should do better.

It is a mistake to place the blame for the present state of affairs on the Branch of Acknowledgment and Research of the Bureau of Indian Affairs. These well-intentioned and scholarly proficient public servants are understaffed, and they labor under a set of guidelines that are at once too rigid in their range and too flexible in their interpretations.

I will single out three areas in which I feel the guidelines appear to defeat the purposes for which they were intended.

First is the key issue of descent. Descent is surely a prime consideration in deciding which groups deserve Federal recognition as Indian tribes and which do not. However, as Professor Jorgensen will effectively, I hope, argue, descent cannot always be determined by simplistic genealogical reckoning. Outmarriage, or exogamy, is deeply rooted in Native North America. Adoption was a common practice, both for individuals and for whole groups of non-tribal members. And modes of reckoning descent, as well as the cultural significance of descent, varied widely in different social systems. The guidelines appear to presuppose and emphasize our own biological and both theories of descent and seem to ignore critical social and cultural variables.

The second area of concern is the criterion of establishing, and I quote, "substantially continuous" existence as a tribal group. Continuity and discontinuity are relative terms, the appropriateness of which is difficult to ascertain in any absolute sense.

Native American social systems, including the political sector, displayed considerable dynamism in prehistoric time, and the rate of change greatly accelerated as a result of direct and indirect contact with Europeans. Many tribes disappeared through devastation caused by disease, warfare, ecological disruption, and psychological despair. Others retained only fragmentary vestiges of their former political system, while still others, often under pressure, adopted forms of organization based on Euro-American models or expectations.

Tribalism is often mistakenly viewed as a primordial condition rather as an adaptive or, in some cases, maladaptive response to historical circumstances.

Correlative to some of these assumptions is the pervasive idea that tribalism is a developmental stage or a fixed set of identification that, once lost, cannot be regained. Thus we tend to see detribalization as an irreversible process. We fail to take sufficient cognizance of the recurrent examples of retribalization, not only among Native Americans, but as a pervasive worldwide phenomenon.

Cultural renewal is widespread today, and was equally so yesterday. It is not incidental that such past and present governmental initiatives as treaty negotiations, the establishment of reservations, the allotment Act the Indian Reorganization Act, the Indian Claims Commission, the threat of termination, and yes, the Federal recognition program have all provided significant sparks to ignite movements toward retribalization.

The third area that I wish to address concerns problems of documentation inherent in the field of ethnohistory.

Petitioners for Federal recognition are required to document genealogy and tribal continuity through a search of written records. After submission of the petition, the Branch of Acknowledgment and Research begins its own arduous and time-consuming review of the documentary evidence, checking and rechecking the validity and reliability of information in the petition.

Some use of oral testimony and direct field work is encouraged, but the bulk of substantial evidence rests on written sources.

If I have learned anything as an ethnohistorian, it is that the written documents must be carefully contextualized and critically evaluated, not only against the cultural realities of the society being examined, but also with all due concern to the perspectives and biases of the observers.

But, as I have also come painfully to realize, over time, even the most scrupulous ethnohistorical interpretation often falls short of revealing the course of a group's history. Very simply put, not everything of importance gets recorded. Documentation may be missing for long periods of time and be absent at critical junctures of a group's history.

In privileging written material, undocumented peoples become ahistoric in our eyes. What we fail to appreciate is that the people may have their own notions of who they are, and they may have their own distinctive sense of historical consciousness.

Units of historical analysis are usually considered to be events. However, what are events for European Americans may not be events for Indians, and vice versa.

These observations appear to have particular relevance with respect to unrecognized tribes. Their frequent invisibility in the historical record may reflect the fact that their existence did not impinge directly on Euro-American awareness through direct confrontation, or through involvement in dramatic events. Often a low profile was deliberately maintained to avoid discrimination or hostile encounters.

Avoidance often served as an adaptive strategy for cultural and social survival.

Thus, I remain suspicious of interpretations that assume gaps in the documentary record are evidence that a tribe ceased to exist as a viable political entity.

I will conclude with some practical suggestions.

First, the guidelines should be simplified and brought more into line with modern scholarship and realities.

Two, more personnel should be allocated to the Branch of Acknowledgment and Research in order to help reduce the appalling backlog of cases.

Three, the time and resources of the Branch of Acknowledgment and Research should be more productively spent to assist in the framing of petitions, with the hope that such effort may lead to a reduction in the number of OD's, or obvious deficiencies, which aren't always obvious.

Fourth, an oversight or an appeal committee should be created to review cases with controversial outcomes. Such a committee might be composed of legal scholars, historians, anthropologists, and respected representatives of various tribes.

Finally, steps should be taken to make the relationship between the petitioners and the Branch of Acknowledgment and Research less adversarial and more mutually cooperate and constructive.

Thank you for your attention.

The CHAIRMAN. In sitting here listening to the testimony this afternoon, I am just trying to put myself in the shoes of the BIA, to justify their requirements. If my recollection is correct, very few

Indian tribes have a written language, and to expect these tribes to have written documentation that would precede the coming of the white man is not asking for too much, but I think it is asking for an impossibility.

And, secondly, to depend upon written documentation, which obviously was not prepared by the Indians but by missionaries who may have had a distorted view of the Indians—after all, they were coming in to calm the heathens and to save them from purgatory, so they came in with certain biases. I just can't understand the custodian and the trustee of the Indians doing everything to place obstacles in their way. If anything, they should be assisting the Indians. And I can assure you that whatever I can do I will be doing.

I am not an anthropologist, but there are certain things that stand out.

What Indian tribes did have a written language?

Mr. FOGELSON. None exactly. The Cherokee. The great genius Sequoia, who is deep in our memory, I understand people in Washington are refitting the ship named after him, and, of course, the world's largest organic species, the redwoods of California, are named after him, almost singlehandedly created a written language for the Cherokee, but that was exceptional.

The interesting thing about that exceptional case is that the Cherokees, once they had this tool didn't necessarily start writing history. They didn't blossom forth into a whole nation of poets. They used literacy for their own purposes.

The CHAIRMAN. When did this happen?

Mr. FOGELSON. This was probably finished about 1822 or 1823 and adopted more generally by the tribe in 1827, and it was a syllabary rather than an alphabet, which had great advantages. With the syllabary, if you were a Cherokee speaker, you could learn to read and write in a matter of days.

The CHAIRMAN. This was after the coming of the white man?

Mr. FOGELSON. Yes. He got the idea from the white man, but he did it on his own.

The CHAIRMAN. So before the coming of the white man, you had no written language?

Mr. FOGELSON. There are certain kinds of inscriptions, and so forth, in meso-America. We have petroglyphs in various parts of North America, but I am very dubious about any kind of written script.

The CHAIRMAN. Would the BIA accept the petroglyphs as written documents?

Mr. FOGELSON. They should if they can think it through.

The CHAIRMAN. Doctor Jorgensen.

Mr. JORGENSEN. Mr. Chairman, it is my pleasure to testify on the appropriateness of these procedures for establishing that an American Indian group exists as an Indian tribe. I have submitted a much longer statement. I will make it very brief here.

The CHAIRMAN. I can assure you that your full statement will be made part of the record, sir.

Mr. JORGENSEN. I would also like to call your attention to testimony submitted by the preeminent scholar of the Salishan speakers in the State of Washington and elsewhere in Coastal North America. I received it just a few minutes ago from Professor Emeritus Wayne Suttles. In reading over it, much of what I have to say he has said, as well.

The CHAIRMAN. That statement will also be made part of the record.

Mr. JORGENSEN. Thank you.

I begin by raising a general question about whether the procedures are meant to facilitate the acknowledgment of groups that reasonable people will agree have just claims to status as a federally recognized tribe, or whether they shall give precedence to assuring that groups with fraudulent claims are denied acknowledgment.

If reviews of previous cases indicate that few bogus claims are actually being made, it may be possible to adopt simpler guidelines and more expeditious procedures. Such guidelines will reduce demands on BIA personnel, reduce processing costs, and make applicants happier.

Let me first discuss the differences between a society and a special function group. Basic to the guidelines is that some groups will not meet the standard required by the regulations that the petitioning groups are Indian tribes, even though the group is Indian. It is likely that such groups can be reviewed and a decision rendered in a very short time if the groups envisioned are solely special function groups, such as religious groups, social clubs, athletic teams, or business firms.

It is reasonable, for instance, to deny recognition to a dancing club composed entirely of persons with 100 percent Indian ancestry if that club does not possess any other general characteristics of a society.

So let me offer a brief definition of a society.

Societies, of which "tribes" are a subclass, are biologically self-replicating, they are intergenerational, and they have persisting associations of persons, among whom interactions, in general, are governed by common conventions, which are, in turn, grounded in the assumptions, beliefs, usages, and institutions constituting more or less distinctive cultures.

In simpler English, they comprise elders, and children, and the age groups in between. They almost always maintain one or more special function organizations such as dancing clubs. Whereas those are societal organizations, the presence of such a club cannot serve as the sole criterion to define a society or a tribe.

By this definition, it should be possible to distinguish tribes from groups that are not tribes, and also to jettison some criteria in the current regulations that are inappropriate for determining that petitioning groups are Indian tribes and are entitled to acknowledgment.

Let me dwell on what I think are inappropriate regulations for the evaluation of tribal status.

The current regulations place great emphasis on demonstrable political continuity of the petitioning entity, and on genealogical purity. Neither criteria are appropriate.

In regard to political continuity and the autonomy as Indian tribes, at initial contact with whites, political developments were very modest among most of the aboriginal societies in North America north of Mexico. Most native societies were both egalitarian and autonomous. It was rarely the case that political powers integrated more than one village (treat 'village' as a tribe). Indeed, political authority seldom transcended the powers of residential kinship groups (a residential kinship group is localized) to manage their own affairs, even if these were several residential kinship groups in a village. It was seldom the case that powers were invested in chiefs or their councils in any of these organizations.

Moreover, group fissioning, the breaking up of groups and the subsequent migration of a daughter group from a mother group led to newly autonomous entities. This was a key factor in indigenous political process. Political hegemony was not exercised by the mother group over the daughter group to control resources, to provide protection, to allocate civic duties, to punish crimes, to distribute food in times of scarcity, or to wage raids of aggression.

For the most part, local American Indian communities were highly autonomous politically, and thus could always have been considered autonomous Indian entities.

To recognize a tribe that previously had been part of another, or that was assumed to be part of another because they were relocated to the same reservation, agency, or rancheria by Federal or State government action, would not be terribly radical. Virtually all American Indian tribes suffered expropriation and domination by 1871. Any sovereignty that any American Indian tribe has enjoyed since subjugation has been limited.

The criterion of autonomy throughout history is unfair and it is unrealistic. It is unfair because it doesn't recognize the traditional Indian practice of segmentary growth and the autonomous egalitarian nature of most Indian societies.

Furthermore, the consequences of over 125 years of domination have included the relocation of several formerly autonomous groups together in the same locale, while treating them as one tribe, and for various reasons do not provide land bases or recognition for other autonomous groups.

In the former instances, accurate State or Federal records may demonstrate political continuity, but also lead to erroneous conclusions about the political autonomy of the several tribes embraced by that reservation, or that agency, or that rancheria.

In the latter instance, the tribes may not have established a continuous record with State or Federal governments because they were not acknowledged by either. The criterion for demonstrating autonomy and political continuity then are inappropriate.

Let us turn to the regulations regarding determination of the authenticity of tribal membership through genealogical reckoning. There has been much emphasis put on this genealogy and descent in prior testimony today. Anthropologists identify societies (as we have defined them above), by studying the relations that are maintained among persons, the ideas that they espouse, the sentiments that they evince, the objects to which sentiments are attached and to which significant symbols are applied.

Anthropologists learned early on in their investigations of American Indian societies that descent was important, but not the most important structural criteria in defining tribal membership or the organization and perpetuation of the tribe. The majority of American Indian societies at contact reckoned descent bilaterally. Bilateral descent means you trace your descent through relatives on both the mother's side and the father's side.

Bilateral societies, in general, trace descent for only a couple of generations, a couple of generations back on the father's side and a couple of generations back on the mother's side, before reckoning becomes hazy.

Since contact, but especially since that time when Indian societies were subjugated on reservations, even most of the societies that once traced descent unilaterally—tracing descent exclusively through the mother's side or exclusively through the father's side is so important a structural principle in some societies that we refer to them as "descent organized societies"—came to reckon descent bilaterally. As a consequence, genealogies are shallow among almost all comtemporary Indians. You usually cannot get back more than two or three generations, hence they are shallow.

So genealogies now are normally collected only after inquiry into economy, social organization, ideology, and religion has begun. Thus, societies are identified and studied first, that is, before genealogies are collected.

The question is why genealogies are collected? Genealogies allow us to discover the kinship and affinal features of the tribal organization, not to determine the authenticity of a society or a tribe. We began with that.

So, genealogies facilitate understanding of how persons are related, not whether they are members of a society that we have already identified. In the collection of genealogies we seek to understand marriage practices between kinship groups, marriage practices within and between communities. Thus we can understand how societies gain members, and we can also understand responsibilities and obligations among relatives and between non-relatives.

This knowledge assists us in understanding the society's economy, its political organization, its social organization, its religion, its ideology.

The use made of genealogies in the current acknowledgment process then is the reverse of the normal scientific use of genealogies. It is used to determine whether a tribe is a tribe, rather than to understand how kinship and affinal relations within a tribe are organized.

Because the vast majority of American Indian societies, past and present, practical local exogamy—it's another anthropological term, and Ray Fogelson has already brought it up— that means marriage between persons from different communities, all Indian communities comprise persons from more than one natal society (or "tribe"). Because local exogamy was practiced everywhere, genealogical research allow us to lay bear the structure of intercommunity marriages, intertribal marriages, interlanguage group marriages. That is why we collect genealogies. The spouse who relocates to the partner's community becomes a member of the partner's society, or his community, or tribe. The term used to identify the social unit is not important.

Naturalization of these in-marrying spouses, or adoptees, or other persons is a regular phenomenon of tribal organization. The offspring of the naturalized member and the person that the naturalized member marries, too, were members of the tribe.

I was struck today, looking over the published list of tribal membership of the committee's staff persons whose parentages are from different tribes. That is common throughout all of North America among all American Indian tribes.

Genealogical analysis is not necessary to the acknowledgment process. It pursues the wrong question, and it is wasteful of time and money.

If I were to propose what criteria might be used, I would talk in terms of cultural continuity and not political continuity, that's the wrong question. And how might I provide some guidelines? How would one assess cultural continuity? If descent is bilateral, it is not an important structural feature in long-term maintenance of the tribe and how it is organized.

If exogamy is widely practiced, and we know that it is, so that some persons in almost all Indian societies are naturalized, they come to be members of a society of which they were not natal members; and if the majority of local segments were at one time autonomous, which they surely were before subjugation what might we look at today to speed up the process and determine what a tribe is?

If a social group biologically replicates itself; if its members marry within and outside their own society; if these couples have offspring; if there are several generations represented in the group at any one time—from children to elders—and if they maintain some institutions (e.g., religious, social, athletic—they don't have to be all of those, but some of them); if they have an ideology about the space in which they reside, about crucial places, places where the deceased elders reside; if they have special religious practices associated with the deceased; if within households there is generous sharing of resources; and if there is considerable sharing of resources outside households through networks of kinspersons and friends; if they recognize sacred places and identify themselves as particular societies with particular names, such as Duwamish or Samish; then, I ask, you have demonstrated a tribal society. Not all of these criteria would have to be demonstrated to establish that a tribal society exists.

I was interested when I read Professor Suttle's paper just a few minutes ago about what he might specify as criteria to verify the existence of a tribal society. I will read them to you, because he obviously thinks the same sorts of criteria are imporant that I think are important. "What are the survivals?" Suttle offers evidence of survival of a past society in a contemporary society, we should expect to "find pride in ancestry, family solidarity, and respect for autonomy of the individual." Insofar as the Acknowledgment Program and its successors have ignored these features of contemporary Indian life, they have missed the reality of cultural continuity; insofar as they have asked for evidence of a classic close-knit community, they are seeking something that never was.

I thank you for your time.

[Prepared statement of Mr. Jorgensen appears in appendix.]

The CHAIRMAN. Doctor, I thank you very much.

How important is it to have anthropologists and genealogists serving in this FAP process?

Mr. **Jorgensen**. I think reasonable people could do the work, following those simple criteria. I don't think genealogists are at all important.

I was reared as a Mormon. Genealogy is very important to Mormons. I have never seen an academically rigorous Mormon genealogy. That's to say, the genealogical research is very suspect. The three or four that have been done by my polygamous families leave much to be desired in terms of academic rigor.

I'm skeptical for other reasons. The way one collects a genealogy, indeed the way an anthropologist collects one, was worked out in the 18th century. What you do follows: you ask a person her name. Then you ask who her biological mother was, and her name, and who her biological father was, and his name. Next you use those names and determine whether that named person had any brothers, by name, and whether they were full brothers, and so forth. If they were half-brothers or step-brothers, the names of those siblings' parents collected. After seven or eight hours, you can get through a part of a genealogy for one person. Within a contemporary reservation society, you can perhaps go back five or six generations if strict matrilineal descent is practiced, as among the Navajo of southeastern Utah. But if you happen to be among the Northern Utes from northeastern Utah among whom descent is traced bilaterally, you may get only two or three generations, and only modest density in collecting the collateral relations for three generations.

How important are the genealogies? How do you connect the surviving persons with whom you work in 1988 to some name on a roll that was prepared in 1885, even to a name on a roll prepared in 1934? It will be easier to connect with the roll prepared in 1934 than the one prepared in 1885. Why not assert kinship rather than reckon it? That's what most unilateral societies do, and that should be good enough for the acknowledgment process.

Let me give one example. Matrilineal kinship is a very crucial organizing principle among the Hopi Indians. Hopi social, ceremonial and subsistence organization is based on matrilineal clans. It is very important that each Hopi village has a Bear clan, and that the oldest female member of that clan serves as the clans mother, because she is not only "clan mother", but is also the "mother of the village." If the Bear clan runs out of women, they seek a female to fill the position from their phratry (several linked clans) in the village. If there is no person in that phratry that can fill the spot, they look for a Bear clan member in one of the other 11 Hopi villages. If they do not locate one, they will look for another woman, but not one from a clan into which they cannot marry. If they are unsuccessful, they will initiate a Navajo woman into the position.

In the Hopi example it is neither desent or genealogical purity that counts! What counts are the symbols that attached to the Bear clans roles in kinship organization because of the sacred religious functions that the Bear clan performs. It safeguards and sponsors the rituals given to them by the gods, rituals that assure Hopis of access to land those rituals must be performed. Is the Navajo not a naturalized Hopi?

So I don't think genealogists—I don't want to put people out of work—are important to the analysis of what is a tribe, and whether a tribe has a claim that is just.

Alfred Kroeber, at the University of California, at the turn of the century began an assessment of the Indians of California. He extended his assessment to all of the Indian societies of Western North America. He and some associates were able to find over 500 named autonomous Indian groups in California alone. Of those that are unrecognized today, he had no trouble finding and studying them. Those Indian groups had no trouble discriminating themselves from one another, and I had no trouble using data from every one of them in one book that I published in 1980 (*Western Indians* San Francisco: W.H. Freeman).

Anthropologists do not have trouble defining a society and analyzing it. The genealogy is not important to it.

The CHAIRMAN. How would you define a tribe?

Mr. JORGENSEN. Tribe is an unfortunate term, for our purposes here because it has a political connotation. I think if we merely went back to our definition of "society" and recognized autonomous ones, as "tribes" we would be on solid empiricial grounds. But even when you say "autonomy" it must be recognized that a group that replicates itself biologically, that has many generations, that has its own customs and rules that govern it, and recognizes its membership, that even these as autonomous groups interacted with many other groups with whom the intermarried, exchanged food and participated in rituals. These networks of relations were ubiquitious. Nevertheless the autonomous societies were not under the hegemony of some group with which they interracted.

So, because of the autonomy and of the extremely low political development of most aboriginal societies of North America—there are exceptions—"tribe" is an unfortunate term. But if we used "tribe" to define as a cultural entity, as I have defined society that would be sufficient. That's the way we anthropologists and natives use the term. That's the way I've used it to do massive comparative studies of North American Indian societies.

Mr. FOGELSON. I would like to just suggest something here, that the etymology of the word "tribe" is very interesting. As far as I understand it, it comes from the Latin "tribus" and it is related to our word for tribute, and it was a term used by the Romans to recognize various Germanic bands, and so forth. And essentially it represented an interaction between a complex society and a more band-like society to have the kind of representation to have somebody to speak with. So it is really a European notion in many, many ways, with deep roots.

The CHAIRMAN. I would like to make an observation, very unscientific observation , that most Americans cannot trace their ancestry beyond their great grandparents, is that correct?

Mr. FOGELSON. Yes.

Mr. JORGENSEN. That is correct, sir.

And perhaps more so now than one generation ago. I am at the University of California, and I've asked students how many of them can give me the maiden name of their maternal grandmother. And, you know, you get about 60 percent who tell me they can.

There I ask "can you give me the maiden name of your maternal grandmother's mother?"

I had a Mormon kid once who could do it, but that was it. Two generations, that's about it.

The CHAIRMAN. Yet, we expect the Indians to go back 10 generations.

Mr. JORGENSEN. Well, yes. Those are the expectations. They don't make sense. Empirically they don't make sense.

The CHAIRMAN. It is a good thing we average Americans don't have to be recognized. [Laughter.]

Well, I thank both of you very much. It has been extremely helpful. And, because of the complexity of the problem before and the obvious interest shown by many, I will keep the record open until June 16, because I am certain that many of you would like to have your individual statements made part of the record. It is an important thing to not only know yourself but to have others know that you are an Indian.

If I were an Indian, I would be proud of that fact.

Today I would like to, before we adjourn, acknowledge the work of one of our staff members. He is the staff attorney sitting at my right, Michael Mahsetky. Michael Mahsetky has been responsible for the matter discussed this afternoon. This has been part of his responsibility. But I am sad to tell you that this will be his last hearing, because tomorrow will be his last day as a member of the committee staff.

For those of you who have not met Michael Mahsetky, he is a member of the Comanche Tribe of Oklahoma. He is a graduate of the Antioch School of Law, and he has worked on this committee for over 6 years now, and his primary responsibilities have been in the areas of Indian housing, Federal Acknowledgment and Recognition. And prior to coming to this committee, he served as director of one of the Urban Indian Health Care programs.

He will be leaving this committee and he will be assuming a very important position as Legislative Liaison with the Indian Health Service.

So, with the training he has received from this staff, I can assure you that we will now have a voice of advocacy in the Indian Health Service.

[Applause.]

The CHAIRMAN. I felt that we should recognize and acknowledge his work. He has done a great job. We're going to miss him, and we are in the process of looking around Indian country for someone to fill his shoes. And so, if you have any ideas, you let us know.

Thank you very much. With that and the gratitude of this committee, we stand in recess.

[Whereupon, at 5:37 p.m., the committee was recessed, to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

STATEMENT OF HAZEL ELBERT, DEPUTY TO THE ASSISTANT SECRETARY - INDIAN AFFAIRS (INDIAN SERVICES), DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, TO DISCUSS THE FEDERAL ACKNOWLEDGMENT PROCESS.

May 26, 1988

I am pleased to be here today to discuss the process used by the Bureau of Indian Affairs to determine whether a group should be granted Federal acknowledgment as an Indian tribe.

Mr. Chairman, your March 30 letter inviting us to attend this hearing outlined a number of concerns the Committee has regarding our acknowledgment process. I will try to address each of those concerns briefly in my oral statement. However, I have attached a more complete discussion to my written statement which I would ask the Committee to include in the record.

We believe that the present acknowledgment process is a good one, based on thorough evaluation of all of the available facts. Credible decisions must be based on careful consideration of the evidence to protect the special relationship between the United States and recognized Indian tribes. We have a professional staff, with extensive backgrounds in American Indian history and ethnology and American genealogy. Although the present process is slower than desirable, this is preferable to a hasty decision.

Not every group that petitions the Department, or Congress, for acknowledgment is a tribe. The current process sets a reasonable standard, thoroughly grounded in case law and historical policy. The courts have defined a tribe on basically similar grounds of tribal character as those in the present acknowledgment regulations.

To be acknowledged under our process a group must meet all seven of the criteria in 25 CFR 83.7. A group which meets the requirement of descent from a historical tribal entity but whose members can not demonstrate continuous historical and present social and political ties to each other can not be recognized under the regulations.

The acknowledgment process includes 14 steps which are outlined in detail in my attachment. Our staff conducts an independent, detailed analysis of the petition text and supporting documents and a small amount of original documentation and field research to verify and often extend the petitioner's research. The staff keeps in close contact with a petitioning group throughout the process, informing them of changes in the petition's status, providing the petitioner with technical assistance, suggestions for strengthening the petition, and allowing ample opportunity at various stages of the process for the petitioner to revise the petition.

To date 7 petitioners have been acknowledged and 14 denied under the process, with another 5 currently under active consideration. 4 others have been resolved outside the process. Of the remaining 83 petitioners, 57 have submitted no documentation and the balance have documented petitions awaiting consideration or inthe preliminary review process. The entire process may take 3 or 4 years from the time the group begins its research, depending on the amount of time required by the group to conduct its research.

I would now like to address briefly each of the 6 issues you raised in your March 30 letter.

1. Whether the budget, resources and staff of the Department's Branch of Federal Acknowledgment and Research are sufficient to adequately process Federal Acknowledgment Petitions in a timely manner.

The speed of the Federal Acknowledgment process has been of concern to petitioners, Bureau officials, and the Congress almost from the inception of the process. An upsurge of completed petitions has far outstripped the staff's ability to process them in a timely fashion. The Bureau has taken a number of actions including purchasing computers for professional staff, contracting out portions of the necessary research and attempting to use interns to increase efficiency and productivity.

2. Whether legal authority needs to be expanded to allow contracting for services by BAR to outside organizations, educational institutions or other groups.

The present authority to contract is sufficient. Our experience with limited contracts at this point is that while it may be effective as a supplemental effort, it is considerably more cumbersome and less cost effective than using in-house staff. However, we are continuing to experiment with contracting services.

3. Whether input from other tribes should be allowed in the FAP process.

Substantive comment is encouraged from all parties. Already recognized tribes and other petitioning Indian groups certainly fall into the category of "interested parties" which might be affected by a decision to acknowledge a petitioning group. Comment from all parties is not only appropriate, but could not be excluded where a party mlight be affected by a decision.

4. Whether there should be an independent review/appeals process where a tribe or group has been denied federal recognition.

We are exploring the idea of having the Department of the Interior's Board of Indian Appeals review the findings of a petition to see if there is ample evidence to reconsider the determination.

5. Is the process appropriate for tribes with whom the United States has a treaty relationship?

We believe the present acknowledgment process is equally valid and appropriate for petitioners claiming a past treaty relationship, having other kinds of past Federal recognition, or with no previous Federal recognition. We do not believe that merely showing some connection with a treaty signer, such as ancestry alone, is a valid or legally supportable basis for extending acknowledgment. Court decisions and administrative approaches have consistently placed the continuing existence of tribal character as primary to the ability to assert tribal rights.

6. The Committee asked about the status of the proposed revisions to the Acknowledgment regulations that are now clearing the administrative system. /These revisions result from the experience of 10 years on the part of the staff and comments on the part of petitioners, researchers and others involved in the acknowledgment process. The revisions will not make major changes in the basic acknowledgment criteria and definitions and will be widely distributed for comment before being published in final form.

In summary, the recognition of an Indian tribe by the United States carries with it a perpetual commitment. There are sound reasons to proceed with the utmost caution when considering the acknowledgment of unrecognized Indian groups. Although our current process is lengthy we believe it is thorough, fair and appropriate.

This concludes my remarks, I will be pleased to answer any questions the Committee may have.

OVERVIEW
OF THE
FEDERAL ACKNOWLEDGMENT PROCESS

May 1988

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I. Overview

We believe that the present Acknowledgment process is a good one that produces a credible decision based on thorough evaluation of all of the facts. These decisions must be based on careful and thorough consideration of the evidence in order to protect vital Indian rights--i.e., the special relationship between the United States and recognized Indian tribes. Although the present process is slower than ideally desirable, this is preferable to a hasty decision. Acknowledgment of a tribe establishes a perpetual relationship, with great impact on Indians and non-Indians in terms of costs to the government and land and treaty rights.

We have an experienced, professional staff, with extensive background in American Indian history and ethnology and in American genealogy. We are constantly working to improve the process. We will shortly issue proposed revised regulations to clarify and improve the process. Once published these regulations will be available for public comment from all parties. We also intend to codify and extend the technical advice and policy on preparation of petitions which are presently provided to petitioners.

Not every group that petitions for acknowledgment, or requests it from Congress is a tribe. The current regulations set a reasonable standard, thoroughly grounded in case law and historical policy. We believe the acknowledgment process strikes a balance between recognizing the historical changes in Indian society and the need to retain the core character of Indian tribalism.

II. Character and Background of the Federal Acknowledgment Process

1. The Background

Previous to 1978, when the acknowledgment regulations (25 CFR 83) were published and the Federal Acknowledgment Project was established, there was no systematic means for extending Federal recognition as a tribe to Indian groups. The standards used to make such determinations were in practice often irregular and had been inconsistently applied in a shuffling of case law, Congressional legislation, and Departmental policies and actions.

Early Supreme Court decisions determining whether a tribe was recognized or not said that Indian tribes were recognized because of actions of Congress or the executive departments, actions which were based on how an Indian group was dealt with by individuals or agencies outside of the group. These actions included the existence of a treaty between the group and the Federal Government, the existence of a reservation, the existence of Congressional legislation dealing with the group, and the establishment of an Indian agency for the group.

Court decisions also considered tribal recognition in terms of the internal character of an Indian group. The most important of these decisions was Montoya v. U.S. (1901) which stated a working definition of an Indian tribe as:

1. composed of Native Americans of common ancestry;
2. united in a community with a single leadership or government; and
3. presently inhabiting or having historically inhabited a particular territory.

During the 1930's, in the era of the Indian Reorganization Act, these two lines of reasoning were combined into what Felix Cohen, in his famous work on Indian law, characterized as the "considerations which, singly or jointly, have been particularly relied upon in reaching the conclusion that a group constitutes a 'tribe' or 'band.'"

Most of the criteria listed by Cohen (the existence of treaty relations, Congressional legislation, land rights, identification as "Indian" by other tribes) are characteristics of recognized Indian tribes as determined by previous case law. The Cohen criteria which reflect the character of a tribe as defined in Montoya are exercise of political authority, which he listed as a major criteria, and evidence of social solidarity, which he listed as a supplementary one. Cohen also stated that "ethnological and historical considerations . . . are entitled to great weight" in determining that an Indian group exists as an Indian tribe.

There were problems inherent in applying the Cohen criteria, however, because they lacked precision and uniformity. In 1975, with an increasing number of applicants for recognition, a moratorium on further acknowledgment declared by the Department, pending review of Department authority to recognize and development of regulations and a systematic procedure. The acknowledgment regulations that were finalized in 1978 defined the proper authority under which the Department could recognize previously unrecognized tribes, formulated uniform procedures within the Department for considering and deciding on requests for recognition, and spelled out exact criteria which an Indian group had to satisfy to be acknowledged as a tribe. Such criteria had to apply to all petitions for recognition yet still take into consideration variations in socio-cultural groups.

2. What Kind of Group Can be Acknowledged Under the Regulations?

A petitioning group must demonstrate that it has existed as a community, identified as Indian, within which tribal political relations have been maintained on a substantially continuous basis since earliest sustained European contact. Members of the group must be descendants of this historical tribal entity.

A group must meet all seven of the criteria in 25 CFR 83.7. A group which meets the requirement of descent from a historical tribal entity but whose members can not demonstrate continuous historical social and political ties to each other that have been maintained to the present can not be recognized under the Acknowledgment regulations.

3. Petitioner and Staff Roles

The Branch of Acknowledgment and Research is mandated by the Department to carefully review and evaluate a petition to determine whether or not a petitioner meets the criteria in the regulations and to make a recommendation to the Assistant Secretary-Indian Affairs whether to acknowledge the petitioner as an Indian tribe. While research and preparation of a petition is the responsibility of the petitioning group, a petitioner's presentation of a case must be closely scrutinized.

The BAR staff conducts an independent, detailed analysis of the petition text and supporting documents and a small amount of original documentation and field research to verify (support or disprove), and often extend, the petitioner's research. The BAR staff keeps in close contact with a petitioning group throughout the evaluation process, informing the petitioner of changes in the petition's status, providing the petitioner with technical assistance, suggestions for strengthening the petition, and allowing ample opportunity at various stages of the process for the petitioner to add to, delete from, or revise the petition.

4. The Acknowledgment Process

There are normally 14 basic steps in the Acknowledgment process:

1. Group submits letter signed by its officers requesting acknowledgment as a tribe.
2. Acknowledgment staff sends the group a packet of information, including a copy of the Acknowledgment regulations and suggested guidelines for preparing a documented petition.
3. A notice of the filing of the petition is published in the Federal Register and in a newspaper near the group's location. A copy of the notice is sent to the Governor and attorney general of the state where the group resides.

4. Group submits a documented petition.
5. Acknowledgment staff reviews the documented petition, notifies the group of any obvious deficiencies and significant ommissions that weaken the petition, and requests further clarification or documentation to strengthen the petition.
6. Group expands its research and provides additional information requested.
7. Acknowledgment staff reviews group's response to obvious deficiency letter.
(a) Group notified of need for further critical information, or
(b) Petition placed in line for active consideration.
8. Petition placed on active consideration. Acknowledgment team (historian, anthropologist, genealogist) reviews and analyzes petition, conducts field research, and prepares draft technical reports.
9. Acknowledgment staff recommends proposed finding to Assistant Secretary-Indian Affairs.
10. Notice of proposed finding is published in the Federal Register.
11. Petitioner and interested parties have 120 days to submit comments to rebut or support proposed finding.
12. Acknowledgment staff reviews submitted comments and recommends final determination.
13. Final determination published in the Federal Register. If not appealed, determination becomes effective 60 days after publication.
14. Final determination may be appealed to the Secretary of the Interior, who may request that the determination be reconsidered.

5. Impact of the Decisions

The acknowledgment process is necessarily deliberate, detailed and thorough. Federal acknowledgment establishes a perpetual government-to-government relationship, and any acknowledgment decision has considerable social and economic impact on the petitioning group, its neighbors, and Federal, state and local governments. Recognition of an Indian group as a tribe subjects that group to a vast and complex body of law both establishing certain rights and benefits and also imposing certain restrictions on the group.

Economically, the impact of acknowledgment decisions will prove to be extremely significant. While it may only cost approximately $68,000 for the Bureau to evaluate an acknowledgment petition, probable future additions to the annual Indian budget are almost immeasurable.

Given the political, economic, and social consequences of acknowledgment, the Department can not recognize a group of Indian descendants as a tribe unless it has had an adequate opportunity to extensively review factual bases for the group's claim to tribal status. Such a review is necessary not only to ensure the equitable and uniform application of the special laws relating to Indians but also is mandated by fundamental fairness to other Indian groups which have petitioned for acknowledgment, as well as to already recognized tribes.

6. Input from Other Tribes into the Acknowledgment Process

After the first proposed Acknowledgment regulations were published in June 1977, comments received from interested and/or potentially affected individuals and organizations indicated that everyone who might be involved in it wanted an open and publicly accountable process. To that end, the final regulations provided explicit and clear administrative procedures: "interested parties" would be kept informed of all stages of the process and would have ample opportunity to comment on proposed acknowledgment decisions. "Interested party" means any person or organization who has requested that they be informed of general actions that are initiated by the Acknowledgment staff and/or petitioners; any person or organization who may be affected by any acknowledgment decision made by the Assistant Secretary, or who has requested that they be informed of actions relating to a specific petitioner; or any person or organization who submits comments or evidence in support of or in opposition to a petition.

Substantive comment is encouraged from all parties. Already recognized tribes and other petitioning Indian groups certainly fall into these categories of "interested parties," as they might be affected by a decision to acknowledge or not to acknowledge a petitioning group. Comment from all parties is not only appropriate, but could not be excluded where a party might be affected by a decision.

7. Standards and Consistency of Decisions

Some parties have raised questions about the amount of research necessary to process a petition; disappointed petitioners have naturally sought to challenge findings on this basis and have demanded that a more standardized evaluation be instituted. Many others think the present level and character of the process is appropriate, given the importance of the decisions. Neither social science nor law are exact disciplines. Few scholars, other than partisans of a petition, would agree that a neatly outlined, "cookbook" approach is possible or realistic. While a highly standardized approach is a superficially attractive idea, it would create an inflexible framework that could easily be harmful to future petitioning groups whose unique circumstances could not be taken into account.

Acknowledgment decisions are consistent with each other. Decisions in different cases by necessity differ significantly, given the enormous social, historical and cultural diversity of petitioning groups. The seven criteria in the regulations are deliberately general to allow a flexibility to evaluate the enormous social, historical and cultural diversity of petitioning groups. The approach to evaluating petitioners under the regulations must maintain a balance between, on the one hand, differences in meaning and importance of tribal relations among members and the wide variations among tribal groups living in different parts of the country and, on the other hand, the requirement that the petitioner have retained some essential tribal characteristics.

Petitioning cases come from all areas of the country and from widely varying Indian cultures. Petitioners are as small as 150 members and as large as 40,000. Some are centered around distinct settlements while others are scattered. They range from relatively traditional bands to communities with over 300 years of close contact with non-Indians. And they include not only groups of a common tribal ancestry, but voluntary organizations of socially unaffiliated individuals with no history and no Indian ancestry. Petitions also vary in the kinds of evidence that are available or which a petitioner chooses to submit.

A rigid formula cannot be established which could be fairly applied to the diversity of cases already before us, let alone to the unenvisioned circumstances in future cases which have not even been submitted. We have yet to see a petition that did not raise substantial new questions and situations. Without the ability to interpret the criteria in the light of the particular circumstances and evidence in a given case, the acknowledgment process would become less rather than more fair. Furthermore, any rigid standard can easily become a two-edged sword that could be raised by parties opposing the acknowledgment of a petitioner. Past decisions are quoted to us by opponents of petitioners as well as by petitioners.

We are by no means stating that general principles about how the criteria and definitions are interpreted cannot be described or elaborated on more fully. The Branch of Acknowledgment and Research already provides this through extensive technical advice to petitioners and their researchers. Petitioners are provided with proposed findings and detailed technical reports which further discuss the Branch's analysis of the data and reasons for their recommendations to the Assistant Secretary.

Our proposed revisions of the regulations include definitions of additional key terms, revisions of existing definitions to clarify their meanings, and other changes to reflect staff practice in interpreting the regulations. In addition, revised and expanded guidelines are planned to enhance the process of advising petitioners and to further encourage petitioners to avoid the present situation where petitions are sometimes prepared with little or no consultation with the technical staff.

The burden of research is on the petitioner. In the past, the staff had attempted to make up for deficiencies in petitioner research during their own research and analysis on a petition. We no longer have the time to do this, nor is it in fact entirely appropriate that we attempt to take on the role of producing the petitioner's main case. Some of what has been interpreted as an escalation of requirements to meet the criteria in fact reflects the shifting of this burden to the petitioners. Thus we have provided more detailed preliminary review letters to petitioners, as a means of providing more and better technical assistance.

Much of what may be claimed by some to be inconsistencies between previously decided cases reflect in fact superficial similarities of isolated facts in greatly differing cases. For example, the fact that a petitioning group organized to seek redress for land or treaty claims may be the result of clearly establishable political processes within a distinct community, or it may be the efforts of otherwise unaffiliated individuals whose leadership has no function or influence except with regard to this one, limited issue, for a limited time. Some other claims of inconsistency, regretfully, reflect outright distortions of our findings on previous cases.

Proof that members of a petitioning group maintain social and political relationships with each other may take quite different forms, depending on whether it is an isolated, closely intermarried group or one somewhat dispersed or with few close kin ties. Factionalism, size, economic circumstances, presence or absence of a land base and similar present and historic differences affect the form political processes may take. Political processes may in part be expressed through formal organizations, or solely through informal leaders or decision-making processes. Authority may derive from kinship, economic power, religious prominence or some other basis.

III. Bureau Position re Treaty Signers

The Committee is considering the question whether the present Federal acknowledgment process is appropriate for petitioners that claim a past treaty relationship with the United States. We believe it is equally valid and appropriate for petitioners claiming a past treaty relationship, those with significant other past Federal recognition, and those with no past Federal recognition at all. What we are doing in the acknowledgment process is determining tribal existence, because existence rather than recognition is the key to asserting rights. We do not believe the position proposed by some that merely showing some connection with a treaty signer, such as ancestry alone, is a valid or legally supportable basis for extending acknowledgment. Having some past connection, which may be quite weak or distant, with a treaty signer or otherwise recognized tribe is not adequate evidence for a presumption of having continued to have or presently having the legal status of being a recognized tribe. This is consistent with past approaches to administrative recognition and with court decisions on the subject. All have placed the continuing existence of tribal character as primary to the ability to assert tribal rights.

In the record of the 1983 Committee oversight hearing on the acknowledgment process is a legal statement of the Samish and Snohomish petitioners. What it proposes is that if a petitioner could show genealogical connection with an historical tribe which has signed a treaty with the United States and some minimal level of present organizational activity, that the petitioner would be entitled to acknowledgment unless the Bureau could disprove their tribal character. We further understand the position to be that unless the Bureau can show Congressional action to terminate, the Bureau must show that the treaty tribe has been so completely assimilated into white society as to have voluntarily "abandoned" tribal relations. We have received similar statements recently from the Small Tribes Organization of Western Washington.

We consider that a ratified treaty has not greater or less significance than other past Executive or Congressional acts which unambiguously embody an acknowledgment of tribal status. A group may have had an unratified treaty, been given a reservation or been otherwise denominated a tribe by Congressional or executive action. All of these embody an acknowledgment of the tribal political character of the tribe at the time of the action. Thus, adopting the position that "treaty-signers" be given special treatment would be unequal treatment for petitioners from areas of the country where no treaties were made or treaties were unratified.

Court decisions dating back to the 1901 Montoya v. United States (180 U.S. 261, 268. 1901) and earlier decisions have defined a tribe on basically similar grounds to those in the acknowledgment regulations--a community, under one leadership or government, inhabiting a given territory--and in the 1913 United States v. Sandoval (231 U.S. 28, 1913) decision--an identified Indian community. Administrative recognition during the Collier administration, when the Indian Reorganization Act was implemented, led to the famous criteria for administrative determination of recognized tribal status, codified in Felix Cohen work on Indian law. These used a combination of the political and community criteria from earlier court decisions and past legislative and/or congressional actions which unambiguously recognized the tribal character of the group in question. However, in 1975, the courts ruled in the Passamaquoddy v. Morton (528 F.2d. 370 1st. Cir. 1975) decision that the Department could not withhold services based on an absence of such previous recognition. In part for this reason, the present acknowledgment regulations adopted in 1978 do not contain such a requirement. Further, the courts in 1981, in U.S. v. Washington (641 F.2d 1368, 1981) held that while present recognition was not a requirement for the exercise of treaty rights, claimants had to do more than show ancestry from a treaty-signer. It held that functioning "since treaty times as continuous, separate, distinct and cohesive Indian cultural or political communities ... [was] required for Indians to now exercise tribal treaty fishing rights." It held that the five of the present petitioners had not demonstrated this. We cite this for the legal principle involved, since acknowledgment cases are decided independently, on a significantly broader base of evidence than was before the courts, and thus may support a different conclusion as to the tribal character of the petitioners.

The United States made treaties with many different tribes at one time or another. At least 20 of the present petitioners claim links with a treaty signer, and there are additional non-petitioning groups that have contacted the Bureau, including additional groups in Western Washington. There are many thousands of descendants of treaty tribes who are not part of a tribal entity, whether recognized or not. By way of illustration, there are approximately 12,000 individuals, mostly in the Southeastern states, who are of documentable ancestry from the Creek Nation, which was signatory to several treaties. Of three petitioners from this area reviewed so far by the acknowledgment process, one has been found to be a tribe under the regulations, and two have been rejected as loosely organized, recently formed organizations, albeit of genuine Creek descendants. It would be inappropriate to acknowledge the balance of these descendants, absent a showing of historical maintenance of tribal character.

For all of these reasons, we do not believe that having a link of some kind with an historical treaty tribe merits different treatment under the acknowledgment process. We believe Congress should be wary of the consequences of adopting what we understand to be proposed standards for giving such groups preference or a presumption of being presently recognized.

IV. Efforts to Improve the Process

1. Process Speed

The speed of the Federal Acknowledgment process has been of concern to petitioners, Bureau officials, and Congressmen alike almost from the inception of the process.

Not anticipated when the present regulations were drafted was the time-cost of evaluating responses to the proposed findings. While the feature of presenting a proposed finding before a final determination is desirable from the petitioner's and the Government's perspective, it requires the staff to stop work which has begun on other cases to review, process, and respond to comments submitted during the 120 day period allowed for comment. This has proven to be very costly from a standpoint of time. This is especially true when a rejected petitioner resorts to legal tactics, political pressure, letter-writing campaigns, and extensive Freedom of Information requests in the hopes of changing the proposed decision or finding information in the Branch files which would indicate that the staff acted inappropriately or made an arbitrary decision in their case.

The delays have been compounded by the effects of an upsurge of completed or nearly completed acknowledgment petitions which began in 1987 and is expected to increase sharply in 1988 and peak in 1989. This has resulted in a sharply increased workload for our staff to conduct preliminary reviews and other administrative tasks. It has also resulted in a backlog of ready cases which is expected to rise sharply. The backlog is expected to rise to 20 by the end of 1989 and the wait time for beginning consideration of a ready petition to increase to eight years by 1991.

The sharply rising number of ready and close to ready petitions is the result of the increased funding of research by the Administration for Native Americans (ANA) and others beginning several years ago, with the consequence that a large number of petitions have reached or will reach the completion stage in the next several years. This phenomenon is reinforced by an increase in the work required for a case caused by increased contention over the decisions and the greater sophistication of professionals assisting petitioners.

2. Budget, Staff Size and Other Staff Duties

Staff Size and Budget

The Acknowledgment component of the Branch of Acknowledgment and Research presently consists of a Branch Chief, two secretaries, and two research teams, each comprised of a Cultural Anthropologist, a Genealogical Researcher, and a Historian (for a total of 9 employees). For the first seven years of its existence, the Bureau's Acknowledgment project had only one research team. In response to pressure from petitioners for measures which might hasten the evaluation process, the Deputy Assistant Secretary - Indian Affairs announced plans at the Senate oversight hearings in 1983 to expand the Acknowledgment staff. However, the Bureau was not able to recruit and hire another complete research team until April of 1985. Although the addition of a second team should have allowed the Branch to complete twice as many cases (it completed an average of 2.5 cases per year between 1980-1985), the complexity of cases such as the Samish and San Juan Southern Paiute petitions has actually caused a reduction in the average rate of completed cases since 1986 to 1.5 per year. This rate is also skewed somewhat by the fact that the Branch had to function with only one Historian during the latter half of 1987.

Duties Other than Active Case Work:

It has been estimated that the Acknowledgment research teams spend about 40 percent of their time working on petition cases which are under active consideration. The remainder of their time is divided between work on petition cases which have not yet reached the active consideration phase, other administrative duties, and special research projects.

Each team member is assigned administrative responsibility for a geographical region of the country. This means that that team member becomes the primary liaison between the Branch, and often the Department, and the petitioning groups in that region. He or she is responsible for handling all inquiries from or about those petitioners, including requests made under the Freedom of Information Act (FOIA), as well as those emanating from congressional or other governmental offices, the media, and the general public. The team member is also responsible for maintaining all files generated by or about the petitioners, including all petition materials, and the publication of all required Federal Register and legal notices relevant to the petitioners in that region. Related duties include meeting with representatives of petitioning groups and advising petitioners regarding petition content and form, research problems, interpretations of the Acknowledgment regulations, and/or the current status of their petitions.

Other administrative duties, for all staff members, include reviewing documented petitions for obvious deficiencies (OD Review), preparing briefing papers and/or conducting briefings for Bureau or Department officials, and briefing the Branch Chief and other Acknowledgment staff members during regular or special staff meetings.

Extensive staff time is required to conduct obvious deficiency reviews of petitions. It is estimated that it requires a minimum of two to three weeks to read and evaluate a documented petition, and prepare written comments to be included in an OD letter to the petitioner. During a recent nine-month period, one staff member reviewed a total of 11 petitions for obvious deficiencies, occupying about 75 percent of his time. Despite these efforts, because of the large number of documented petitions received, there is still a substantial number of petitions which are awaiting an OD evaluation.

Because of their special expertise in certain areas, individual team members are from time to time requested by the Assistant Secretary - Indian Affairs or other executive level officials to conduct special research projects which may be outside the scope of the Acknowledgment process. Last year, for example, the Department of Justice requested the genealogists to conduct research for and appear as expert witnesses in a court case involving the ancestry of certain California Indians. One of the genealogists estimated that this special project took up more than 20 percent of his time during the year.

3. Efforts to Speed the Process

Notwithstanding these factors, it is frustrating to both the petitioner and the staff to place a petition which has been two years in preparation on hold for two to five years before a decision can be made. In response to this problem the Bureau has taken a number of actions in an effort to speed the process without losing any of the quality of work for which the Branch has become known and which we have emphasized here as essential for decisions of such consequence to the Indian world and the Federal government.

Efforts Discussed at the Last Oversight Hearings in 1983

1. During the course of it existence, the Branch of Acknowledgment and Research has used nine interns. Efforts to use college interns as research assistants has not proven to be effective. Funds and positions have not been available to recruit graduate level interns. Consequently undergraduates generally do not have internships long enough (one to three months is the average) nor are they experienced enough to do any productive casework after they have taken time to learn the process and research techniques. The typical college intern usually requires more staff time to train and orient than he/she is able to return in casework assistance. Further, it has not been possible to locate a reliable source of interns which would allow continuity of operation.

2. Use of the Intergovernmental Personnel Act to obtain professional staff assistance on loan from universities and colleges has not proven to be a viable approach to speeding the BAR process. Many professors were not available at opportune times, others were unwilling to accept the tenuous terms of the appointment, and the time involved in completing the paperwork and negotiations with various individuals proved to be too complicated and lengthy to make this option feasible. Further, because of limited funding and because of the Bureau could only provide a minimal contribution to attract this sort of help, the program was dropped.

3. A conference was held in 1984 with a select group of very knowledgable professionals with a background in the Federal Acknowledgment process to discuss ways to speed the process and reduce the burden on the petitioners. Many of the suggestions submitted at this conference have been incorporated into a revised version of the regulations now under consideration within the Department.

Other Efforts Made by the Branch and the Bureau to Speed the Process

1. Experiments were tried with developing a shortened form of researching the background of groups and drafting shortened versions of research reports. Our experience has been that the shortened version of the reports were generally not well received by professionals in the field. They were well received by the one group, Narragansett, which was acknowledged using this form but were the source of great complaint by the two groups which were rejected. As a result of complaints by the declined groups, more time was spent repairing and supplementing the reports than would have been used to do the full and complete form which is presently in use.

2. In order to speed the process, BAR is now asking more detailed quesions in the obvious deficiency process and doing less of its own staff work to fill in qaps in the petitoner's research during the actual work on the petition. While petitioners have criticized the Acknowledgment staff for taking too long to complete their research on a case, if they are subsequently rejected they complain that the staff did not do enough research. Efforts to provide more technical assistance to groups through an expanded obvious deficiency letter have generally been misconstrued as an escalation of the requirements to meet the criteria and have been the source of much complaint. We have, however, continued to provide the petitoners with expanded obvious deficiency letters, explaining in detail areas in the petition which may be problematic when the petition is actually considered.

3. The staff has been equipped with computers within the last two years. Although it is difficult to determine exactly how much time is saved in any given petition by the use of computers, it appears to be substantial. At least 30 percent of the manuscript finalization is eliminated since the professional staff compose their documents on the computer and the seceretarial staff is able to proof and finalize much faster than before. Further any last minute corrections do not dramatically slow the completion of a final document. Other techniques are being developed to speed the research and production of the proposed and final reports. The computers have proved most useful in the genealogical work on a petition and would reduce the research time even more if a staff member could be added to input the genealogical data into a database.

4. Contracting as a Solution to Speeding the Process

The Committee has asked whether the Bureau's authority to contract needs to be expanded, presumably as a means of speeding the process. Contracting with professional anthropologists, genealogists and historians to do the basic research on cases has been discussed even before the present regulations were published. The present contractual authority is sufficient to contract out major parts of the process, if this is found desirable. We have tried limited contracts in seven separate instances and although this approach to speed up the process has several serious flaws, we are continuing to experiment with it. Our experience at this point is that while it may be effective as a supplemental effort, it is considerably more cumbersome and less cost effective than in-house staff.

Problems We Have Encountered with Contracts on Previous Cases

We have recently completed one case in which much of the archival research was completed on contract. Since this was an experimental case, BAR personnel also worked on the case. It was, unfortunately, a declination. The group is now complaning that they "did not ask for any short cuts," and are requesting a "complete investigation" be done "on and by the BIA staff." Thus, although the research was as thorough as on any other case, the group is using the fact that an outside researcher worked on it as a reason to accuse the Branch of not doing a thorough job.

Other problems we have encountered

a. Properly administering the contract, orienting the contractor, and supervising and checking the work did not save staff time or allow them to continue working full-time on additional casework. To speed the process by using contract researchers, it would be necessary to put the present staff to work full time as contract office representatives and technical advisors to the researchers, supervising several cases at one time.

b. Contracting all of the necessary research on any single case does not appear to be cost efficient. Our present estimates indicate that to contract the research on a single case would cost approximately $134,000 to $194,000 or about three times the cost of doing the work with Bureau staff.

c. Some contractors have not been entirely responsive to the needs of the Acknowledgment staff in doing their research, causing the staff to have to do additional research to close the case, thus losing time and costing more than anticipated.

Anticipated Problems with Large-Scale Contracting of Branch Work

a. There is a major problem coordinating the times the most qualified researchers would be available to complete the work. Many of the experts in any given area are college professors and are only available during certain periods of the year. Further, most contractors have expressed an unwillingness, under one contract, to prepare reports on which the BAR staff can make a proposed determination and a second report to respond to comments after the rebuttal period. Additionally, contractors may become involved in litigation to help defend their work.

b. Generally, the experts on any given group tend to be advocates or antagonists of the group. It is somewhat difficult to find neutral researchers, with previous experience with a group. We would therefore be contracting with researchers who must not only become familiar with the regulations and the process but also the group itself.

Notwithstanding these problems, the Bureau is continuing to evaluate the use of contracting as one avenue. We are now in the process of contracting the anthropological and genealogical research for the Indiani Miami petition. This is the largest contract we have tried thus far. We are in the very early stages of the development of the contract on this case and therefore are unable to give any results of this experiment.

5. Appeals Process

The Senate Select Committee's March 30 inquiry questioned whether there should be an independent review/appeals process when an Indian group has been denied Federal acknowledgment. Other interested parties have also suggested the need for an independent review upon the request of an Indian group or any interested party when the Bureau has made a determination either for or against a group.

We are exploring the idea of having the Department of the Interior's Board of Indian Appeals review the findings of a petition to see if there is ample evidence to reconsider the determination.

6. Proposed Revisions to the Acknowledgment Regulations (25 CFR 83)

The Committee and others have evidenced great interest in the proposed revisions to the acknowledgment regulations that are now under review within the Department. These revisions result from the experience of 10 years on the part of the staff, comments on the part of petitioners, researchers and others involved in the acknowledgment process and suggestions by a conference of selected professionals to speed the process and reduce the burden on petitioners. We expect to widely distribute this proposal, once published, to petitioners and the other parties interested in the acknowledgment process to solicit their comments. Careful consideration will be given to comments and proposed changes that are received.

V. Conclusions

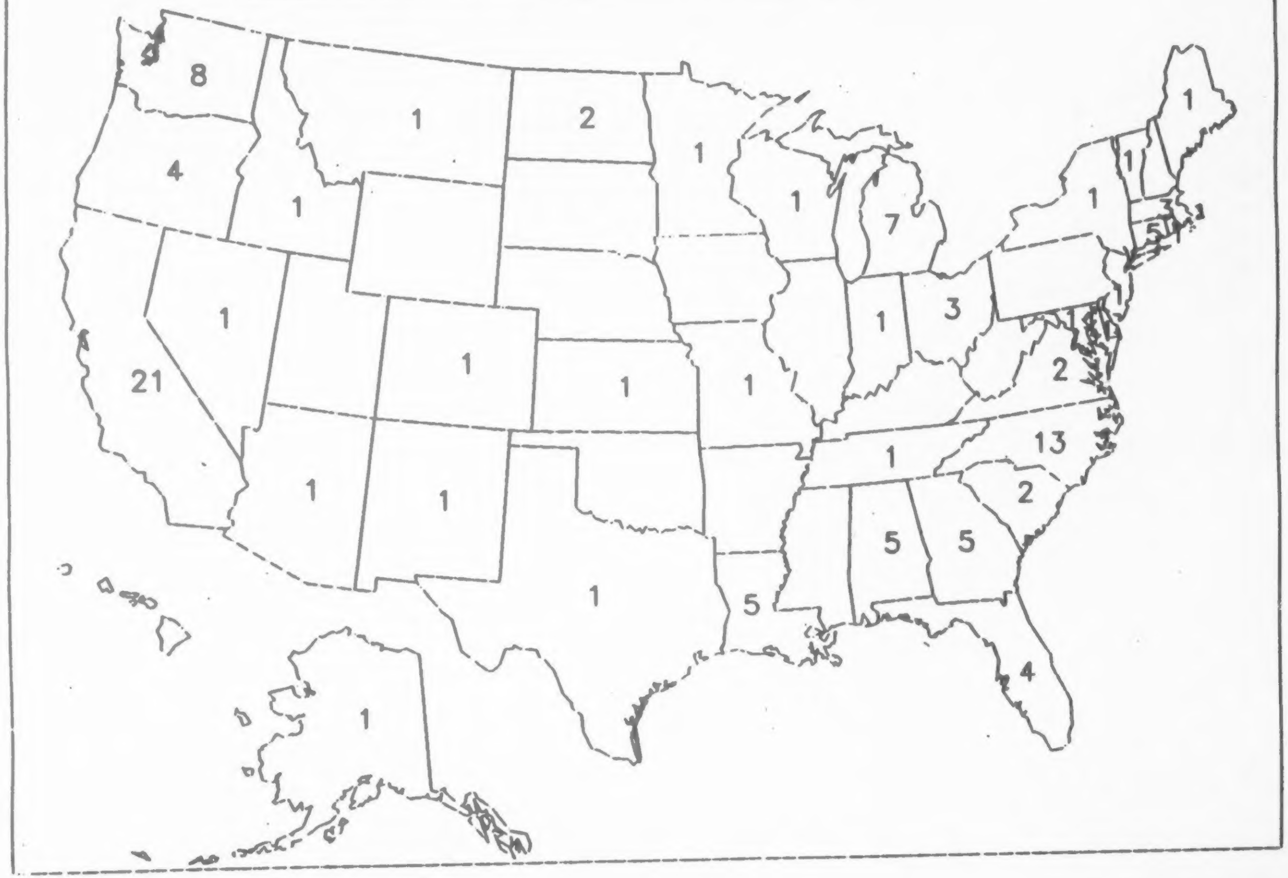
The determination of who should be entitled to a special relationship with the Federal Government and eligible to receive Federal services because of their status as American Indian tribes is, and should be, a factual decision based on accepted principles of social science and legal decisions. Unfortunately, neither are exact disciplines and decisions by the Branch are occasionally subject to challenge by some petitioners, especially those rejected under the regulations, and their attorneys and researchers. An example of this is an anthropologist who told a BAR staff member several years ago that the standards were the "best possible," but who now represents a number of groups and argues that the standards are unclear and too difficult.

The decisions are further complicated by the fact that no clear definition of "Indian tribe" seems possible. An informal study done in 1980 by the Branch indicates that the Bureau of Indian Affairs alone operates with 39 separate definitions of Indian. A study completed by the Department of Health and Human Services in 1980 indicated that other Federal departments are similarly diverse. HHS was unable to develop a universally acceptable definition. Congress, also is inconsistent in defining Indians and Indian tribes when enacting Indian legislation.

In the absence of a universally accepted definition of Indian tribe, we believe the present standards and the application thereof are appropriate for the evaluation of groups seeking acknowledgment, that they reflect past practices and modern case law, as well as the suggestions of the American Indian Policy Review Commission in 1977. Piecemeal legislation for individual groups invites the problem of inconsistent standards that in the past led to the establishment of the present administrative process.

Recognition of an Indian tribe by the United States carries with it a perpetual commitment. While there is every reason to seek to correct social and political injustices, there are sound reasons to proceed with the utmost caution when considering the acknowledgment of unrecognized Indian groups.

Number of Petitioners by State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1
2
21
1
1
1
1
1
1
1
1
1
1
5
1
7
1
3
1
5
5
4
1
1
3
5
1
1
2
13
2
1

BIA'S AVERAGE PER CASE COSTS FOR ACKNOWLEDGMENT PETITION EVALUATION

REVIEW, RESEARCH & EVALUATION BY PROFESSIONAL STAFF = $48,240*

TRAVEL & FIELD RESEARCH = $5,400**

MANAGEMENT = $2,850***

CLERICAL SUPPORT = $1,580****

OVERHEAD = $10,534*****

TOTAL = $68,604

*Based on 40% of mean annual salary of BAR's professional staff, multiplied by 3 (the number of professional staff who work on a case). Includes technical assistance; obvious deficiency review; review, research, writing & evaluation during active consideration phase; publication and distribution of proposed findings; review, research, writing & response to comments & rebuttals; publication and distribution of final determinations; & review, research, and response to any appeals.

**Based on average research trip cost of $1,800, multiplied by 3 (the number of trips made on average case). Includes transportation, food and lodging, photocopying, long distance communication, and any other field research costs.

***Based on 5% of Branch Chief's annual salary. Includes case specific administration, supervision, coordination, and managerial review of professional and clerical workload and staff.

****Based on 10% of Branch secretary's annual salary. Includes case specific typing, computer formating, photocopying, circulation of reports for executive review, and mailings.

*****Based on 20% of salary costs to cover expenses of employee fringe benefits and office space, equipment, supplies, etc.

POTENTIAL ADDITIONAL SERVICE POPULATION*

(* Computations do not include Lumbee Regional Development Assn of North Carolina with membership estimated at 35,000)

Number of known groups	230
Average group size	1,054
Estimated total population of known groups	242,420
Estimated total number of petitioners	180
Estimated total population of petitioners	189,720

ESTIMATED GROUP SIZE

Under 300 members	36
300-500 members	14
501-1000 members: (includes 10 guesstimates @ 1000 each)	30
1001-2000 members	18
2001-3000 members	5
3001-4000 members	2
5001-6000 members	1
6001-7000 members	1
9001-10000 members: (Piscataway-Conoy, MD; United Houma Nation, LA)	2
35000 members: (Lumbee Regional Development Association, NC)	1

May 9, 1988

STATEMENT OF HERMAN A. WILLIAMS, SR., CHAIRMAN
TULALIP TRIBES OF WASHINGTON

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
U. S. SENATE
OVERSIGHT HEARING ON THE FEDERAL ACKNOWLEDGEMENT PROCESS

MAY 26, 1988

Mr. Chairman and Members of the Committee:

The Tulalip Tribes of Washington commend the Committee for conducting this hearing on the Federal Acknowledgment Process (FAP), an administrative procedure for acknowledging that an Indian group exists as an Indian tribe, (25 CFR Part 83).

For the record, I wish to emphasize that the Tulalip Tribes enjoy standing as a "Federally-recognized" Indian tribe and are organized pursuant to the Indian Reorganization Act of 1934 (48 Stat. 987, 25 U.S.C. §476). The Tulalip Tribes have resided on the Tulalip Reservation since it was established by the 1855 Treaty of Point Elliott. We are the successors-in-interest to the Snohomish, Snoqualmie and Skykomish Tribes and other tribes and bands who signed that treaty. These tribes honored their treaty commitment and moved to the reservation as required by the terms of the treaty.

We adopted our present name, the Tulalip Tribes, after the Tulalip Bay when we organized under the Indian Reorganization Act.

Our tribal members are proud of their status as a Federally-recognized tribe, and they know that, within the context of public policy, such status carries great importance to the Tulalip Tribes and broad responsibilities for the United States. The Tulalip Tribes exercise inherent sovereign powers over their territory and members and exercise a government-to-government relationship with the United States. The United States carries a self-imposed legal trust responsibility to protect the Tribes' lands and associated resources and our governmental rights, and, in addition, the United States provides selected community services to our members solely on the basis of their status as Indians.

The Tulalip Tribes view the foregoing as the very essence of Federal-Indian relations, and we have prepared our testimony for this hearing within that framework. Committee staff has suggested to us that we address the following issues: (1) The appropriateness of the criteria underlying the FAP; (2) should treaty tribes be exempt from the FAP?; (3) adequacy of the FAP budget and staffing resources; (4) the contracting-out of certain FAP functions; and (5) the review of FAP findings by an independent entity.

The appropriateness of the criteria underlying the FAP

The FAP criteria reflect long-standing rules as to what constitutes a sovereign Indian tribe. Such criteria have stood the test of time, and are virtually identical to those proposed by the American Indian Policy Review Commission.

We see no justifiable reason for modifying or weakening these criteria other than to create new and easier ground rules for the acknowledgement of groups who cannot establish a continuous history of existence as the tribes they claim to be. It appears to the Tulalip Tribes that the greatest criticism of the FAP criteria emanates from those groups who are aware that their case for acknowledgement by the FAP fails to measure up to current criteria.

We, therefore, oppose any modification of the FAP criteria that would diminish or weaken it as a standard for acknowledgement of an Indian group as an Indian tribe.

Should treaty tribes be exempt from the FAP?

Groups claiming to be "treaty tribes" should not be automatically recognized or exempt from the FAP. Such claims of tribal existence must be carefully analyzed to determine whether the group has maintained tribal existence with historical continuity and otherwise meets the acknowledgement criteria.

We are aware that several Indian groups have put forth the claim that they are the "treaty tribes" who entered into formal treaties with the United States. What they conveniently ignore is that the United States has dealt with the legal "successors in interest" to the treaty tribes on a government-to-government basis since treaty times. At best, some individual members of these modern-day claimants might be able to trace their descendancy from the original tribal signatories of specific treaties.

Unless confirmed by a judicial decision, we reject the claim of several Indian groups, in various stages of the FAP, that they are "treaty tribes" and should be exempt from the acknowledgement process.

The adequacy of the FAP budget and staffing resources

Clearly, the Branch of Acknowledgement and Research, Bureau of Indian Affairs, must receive adequate financial and staffing resources to effectively administer the FAP. We appreciate the thoughtful and professional historical, legal, cultural and administrative research that must be undertaken for each Indian group's claim for acknowledgement. Clearly, a substantial burden could be lifted from the FAP staffing and financial resources if those Indian groups, whose claims to tribal status have already been rejected by the Federal courts, were denied the right to seek acknowledgment as a tribe pursuant to the FAP.

We support adequate resources for this purpose; however, we oppose the concept of increased resources for the FAP to merely accelerate the process to satisfy an impatient claimant Indian group.

The contracting-out of certain FAP functions

The Federal Government, as a matter of public policy and practice, utilizes contract authority broadly to engage private contractors to assist in fulfilling governmental functions and responsibilities. We concur that such policy and practice may be applicable to the FAP with the caveat that any contracting-out of FAP functions should be done only in a manner that assures independent, unbiased results. Strict "contlict-of-interest" checks and balances should be adopted and implemented in any FAP contracting-out.

Review of FAP finding by an independent entity

The review of the FAP denials of petitions for acknowledgement should be undertaken by the Federal courts, not some newly-established independent review entity. These courts possess recognized expertise in reviewing administrative matters of the Federal departments and agencies. Any determination by an "independent" review entity would be subject to Federal court review in any event.

We believe the suggestion for a so-called independent review, representing an additional costly step, is simply an attempt by groups who failed to achieve acknowledgement under the FAP (some of whom have previously been judicially determined to not have tribal status) to gain still another forum in which to litigate previously-decided claims.

The Tulalip Tribes strenuously oppose the notion of an "independent" review of the FAP findings on the grounds it would subject the formulation of public policy to an ad hoc entity with no legal standing in the Federal system.

Mr. Chairman, the Tulalip Tribes now wish to address circumstances when we believe it would be inappropriate for the Congress to legislatively acknowledge an Indian group as a Federally-recognized Indian tribe. We are fully aware that some groups are simply beyond the reach of the FAP, i.e., a tribe whose Federal-Indian relations were terminated by statute and can only be restored by a subsequent statute. Also, certain litigating circumstances may call for prompt legislative acknowledgement of a group.

In all other circumstances, the Tulalip Tribes believe it would be appropriate for Congress to decline consideration of extending legislative recognition, and instead defer to the established FAP procedures for determination of tribal status.

For example, when a group has a petition for federal acknowledgement currently pending before the FAP, and that process (and any judicial appeal therefrom) has not been concluded, the Tulalip Tribes believe that Congressional intervention to legislatively extend recognition would be inappropriate. The Bureau of Indian Affiars has established clear recognition procedures, and an elaborate mechanism for investigating claims of entitlement to recognition. The professional FAP staff conducts objective research on behalf of such claims pursuant to the established criteria. The process operates in a "quasi-judicial" context so as to afford full due process to all interested parties (including those that oppose the recognition). This process is multi-staged and provides a petitioning group the opportunity to respond to proposed findings, and a further opportunity to seek review by the Secretary of the Interior if the group is dissatisfied with the denial of acknowledgement. Finally, a petitioning group is free to seek judicial review of their claim if they disagree with the Secretary's decision.

As another example, the Tulalip Tribes believe it would be inappropriate for Congress to confer legislative recognition as a tribe upon a group that has petitioned for acknowledgement pursuant to FAP and been denied acknowledgement by the Bureau of Indian Affairs, and/or denied reconsideration by the Secretary of the Interior, and/or been unsuccessful in a judicial appeal therefrom. Under these circumstances, the group would already have had a full and fair opportunity to present all relevant evidence to the Bureau of Indian Affairs, the Secretary of the Interior, and the reviewing court.

The Tulalip Tribes also believe it is inappropriate for Congress to consider extension of legislative recognition where the tribal status of a group has previously been adjudicated by a court, with the resulting determination that the group is not an Indian tribe, particularly where the United States was a party to such litigation and, by law, is bound by the results thereof. Established principles of law and the need for finality in judicial decisions make it appropriate for Congress to defer to such judicial decisions that are binding upon the United States. This is particularly true where a group has itself instigated the judicial process that led to a determination that it lacks tribal status. In all such cases, it would be appropriate for Congress to defer to the factual and legal determinations made in such litigation by qualified Federal judges whose qualifications have been reviewed by the Senate as part of the advise and consent process.

In the Tulalip Tribes' view, Congressional intervention after a final judicial decision on a particular group's tribal status would only serve to undermine the integrity of the judicial process, and would be unfair to groups that participated in the judicial process in opposition to the petitioning group's request for tribal status. Such opposing groups would be bound by the litigation results had they not prevailed. In fairness, they should be entitled to rely upon the judicial decision when they prevail.

The Tulalip Tribes feel it is appropriate to bring these matters to Congress' attention at this time because we are aware that several unrecognized groups are seeking legislative recognition. The Tulalip Tribes believe these groups denominate themselves as the "Duwamish Indian Tribe, Samish Indian Tribe, Snohomish Indian Tribe, Snoqualmie Indian Tribe, and Steilacoom Indian Tribe." These groups previously attempted to intervene in the United States v. Washington litigation to seek an adjudication of their treaty fishing rights, but were denied intervention. The litigation determined that these groups are not tribes and are not political successors-in-interest to tribes of the same name that signed the treaties in question. The Tulalip Tribes have submitted a detailed description of the results of this litigation as part of the record in the July 21, 1983 oversight hearings (on the Branch of Federal Acknowledgement Bureau of Indian Affairs) before this Committee.

Since the United States and the Tulalip Tribes opposed these groups' claim to tribal status, we strongly believe that we are entitled to our victory on this litigation, and that the decisions of the Federal Courts should be respected and afforded finality.

Mr. Chairman, let us assume that a group of disgruntled citizens in one of the fifty (50) sovereign states attempted to secede from that state and establish a new sovereign of the same name. Let us assume further that, after having exhausted all legal and administrative remedies available to them, such group was denied their cessation effort. Would the Congress respond to their appeal to enact legislation that could lead to statehood for them? We think not. We cannot envision the Congress enacting objectionable legislation of this type over the opposition of the sovereign state.

The Tulalip Tribes' request that you accord us the same respect and consideration in the circumstances with the several tribes seeking to become Federally-recognized over our objections.

In conclusion, the Tulalip Tribes wish to emphasize to the Committee that acknowledgement of an Indian group's status as a "Federally-recognized" Indian tribe by the FAP places that tribe in a unique status that is unmatched by any other groups of citizens in the United States. Such tribe has achieved this unique status because it has unquestionably maintained its tribal character and political relationship with the United States. We strongly urge the Committee to support the continued use of the strict criteria for achievement of the "Federally-recognized" status by Indian groups. Any dilution of such criteria would tend to diminish the importance and uniqueness of the "Federally-recognized" status, if not trivialize it.

TESTIMONY OF CECILE MAXWELL

On Behalf Of

THE CHINOOK, COWLITZ, DUWANISH,
SAMISH, SNOHOMISH, SNOQUALMIE AND
STEILACOON TRIBES OF WASHINGTON

Before the

Senate Select Committee on Indian Affairs

May 26, 1988

I am Cecile Maxwell, I have been the Chairperson of the Duwamish Tribe for 12 years. I reside in Seattle, Washington, the current and aboriginal home of the Duwamish. I am the great-great great niece of Chief Seattle who was the principal signer of the point Elliot Treaty in 1855.

I would like to thank you and the committee on behalf of the seven Washington tribes represented here today for this opportunity to bring out our unresolved treaty rights problems.

I would like to introduce the Tribal delegations that have traveled here today to present their written testimony for the record and who have asked me to speak on their behalf. They are:

Chinook	Don Mechels, Chairman Charles Mechels, Tribal Council
Cowlitz	Marsha Williams, Vice Chairperson
Duwanish	Cecile Maxwell, Chairperson Frank Fowler, Tribal Council
Samish	Margaret Greene, Chairperson Mary Hansen, Tribal Council Secretary Mac Orieo, Tribal Council
Snohomish	Robert Woodley, Chairman Virginia Ryan, Tribal Council
Snoqualmie	Ernie Bass, Chief Jim Zackuse, Sub-Chief Ron Lauzon, Sub-Chief Karen Boney, Tribal Council Secretary Mary Anne Hinzman, Tribal Council Leanne Hartman, Tribal Council Frances de los Angelos, Tribal Council
Steilacoom	Joan Ortez, Chairperson

Each tribe has provided the Committee with written testimony detailing its own history and current situation, which we would like to be made part of the record of this hearing.

Initially, I would simply like to summarize central issues common to all seven tribes.

Each of these tribes has a treaty relationship with the United States, and has won an Indian Claims Commission judgment against the United States for violations of its aboriginal and treaty rights. The only reason we don't have our own reservations, like other tribes in Washington State, is because treaty promises made to us were not fulfilled. In fact, as late as the 1970s, the Bureau of Indian Affairs was working with several of these tribes to find land for reservations.

Each of these tribes has a long history of receiving Federal Indian services, including Indian Health, Indian boarding schools and trust allotments, until the last 15 years. All of us also exercised Indian treaty fishing rights, and were issued B.I.A. "blue cards" or identification cards in the 1950s. The B.I.A. even sent letters to some of our councils in the 1950s and 1960s, advising that we should follow its regulations! When the courts made new treaty fishing rights decisions in 1974, the B.I.A. initially worked with us to clarify our status and our eligibility to fish under those decisions.

None of our tribes has ever been terminated by Congress. From the 1930s through at least 1971, the Interior Department consistently took the position that a treaty relationship with the United States is recognition, and that only Congress can take that away. The legal status of the non-reservation Upper Skagit, Sauk-Suiattle and Stillaguamish tribes was reaffirmed between

1971 and 1974, simply on the basis that they were treaty parties and are still organized. Our troubles began in June 1974, when the Interior Department reversed this long-standing policy and began opposing our assertion of the treaty fishing rights we had been exercising.

None of us ever voted or agreed to confederate with any of the existing reservation tribes, although of course some of our members or relatives live on those reservations. We provide whatever services we can to our own members, and in many cases also to many reservation Indians who come to us for things their own tribes cannot provide. On the other hand, those of our people who do live on reservations have been often been the victims of discrimination. Some of them have been threatened with losing the few rights they have, because of our being here today.

The fact that our culture--like yours--has changed over the past 130 years is not an excuse for depriving us of our treaty rights or property rights. Our culture has changed in the same ways as other tribes in our region, mostly because of the conditions imposed on us by the government.

From treaty times to the present, each of our tribes has maintained an independent identity as a tribe, with recognized tribal leaders and the documented preservation of tribal cultures. Throughout this period of time, there have been continuing relationships with other tribes and the federal government.

We represent indigenous tribes still residing in aboriginal areas, and each tracing its ancestry to an aboriginal tribe with federally-protected treaty rights. These facts are indisputable.

In addition, the cultural continuity is demonstrated. These tribes have preserved traditional practices in too many areas to recite here. However, examples include:

- hunting, gathering and food preservation
- fishing and drying
- Indian medicines
- traditional kinship-based governmental structure
- pow wows and ceremonies
- languages
- rite of passage
- carving, beading and jewelry-making
- basket making and use
- child rearing practices, including cradle board use
- extended family obligations
- traditional religions
- traditional burial grounds

In addition, the 1880 Census indicated that these tribes had retained their traditional lifeways to a greater extent than the reservation tribes which were subject to forced acculturation by federal authorities. Reservation Indians were identified as farmers, while our members continued to be identified as fishermen and canoe carvers. In addition, many of our people continued to reside in longhouses while reservation Indians were living in wood frame houses.

To this day, these tribes have continued to preserve many of their traditional cultural activities.

We also each have a constitutional form of government, most going back to the 1920s, and our own membership criteria and rolls. We are very proud and jealous of our tribal identity.

The Acknowledgment process at Interior is not a fair option for us. All of us have petitioned for status clarification through FAP, and two of us have already been turned down with no regard whatsoever to our treaty status. We have spent 10 years waiting for administration action -- a wait which was imposed on these tribes despite our treaty status. We have experienced unanticipated delays in resolving this injustice at enormous cost to the government and the tribes, as well as the application to our tribes of improper criteria. The original goal was to review 20-25 petitions per year. This, of course, has not happened.

Some of the criteria we have been asked to meet ignore the traditional sociopolitical structure of Northwest Indian societies.

Apart from the appropriateness of putting treaty tribes through these tests, there is the fact that the B.I.A. has only been processing a few petitions a year, and the Acknowledgment staff has advised that we are still years away from preliminary decisions. The Samish waited seven years, most of it just trying to get the BAR staff to disclose research data cited as support for the Samish determination.

What we want is legislative reaffirmation of our status under our existing treaties with the United States. No one has explained to us how or when we lost our status; we just know that the B.I.A. started treating us differently in 1974. This places us in a special category among the tribes that have been involved in the FAP process thus far.

We also urge Congress to legislate appropriate criteria for Federal recognition or acknowledgment, which reaffirm the duty of the government to respect treaties already made, and to assure that no other treaty tribes have to suffer the frustration and despair this long dispute has caused us. Tribes which already have been recognized by treaty or Act of Congress should not be required to prove anew their entitlement to federally-guaranteed rights.

The cost to the government of reaffirming the recognition of our tribes will be negligible. The first point is that these are treaty obligations already made, not new obligations to new groups. We received a wide range of Indian services until quite recently, so this is a matter of restoring previous federally-funded services. We still receive many services from the Indian programs of agencies other than Interior, and we would expand Interior's Indian service population by less than one percent. On a positive note, various of these tribes still have land claims judgment funds in the U.S. Treasury, access to which is denied because of the dispute over their legal status. That money alone would go a long way to putting their communities back on their feet.

We don't want hand-outs. We want recognition, vindication of our treaty relationship with the United States, and dignity.

Duwamish Tribe

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The Duwamish Tribe presently has 375 enrolled members and has an active political governing body. We were also the first signatories to the Point Elliott Treaty. Chief Seattle whose father was of Suquamish decent and his mother of Duwamish decent acted as Chief of the Duwamish and other allied tribes. Tradition will show that the male always lived with his mother's tribe. Issac Stevens was told to make treaties with the Indians and did so in such a hurried fashion making promises that his concern of the Duwamish and their own separate reservation never came to be. The Duwamish were assigned to the Port Madison reservation and Agent Paige suggested this move not a wise one since the Duwamish and Suquamish were not at the friendliest terms. He suggested their own separate reservation in the area they were accustomed to which is the Seattle city area. A number of Duwamish went to the assigned reservation only to die from hunger and because they did not know the area or the seasons. At one other time a reservation was suggested in the Black River area which is also known as Renton but denied after the citizens of Seattle let it be known they protested by signing a petition.

Many years went by with no justification. In 1925 the Duwamish adopted their own Constitution and By-laws and began to govern themselves in a political way. The BIA had recognized us by corresponding with us and doing an evaluation for Federal recognition. In later years they stopped recognizing us for a reason that is unknown to this day. There is no given reason why and when asked there is no reply. The Duwamish people are still surviving thru the unjustices and we are making the public aware of this crime. The documents enclosed will show how in times past the BIA has recognized us and how the tribe has operated as far as political moves are concerned. With so much history behind us from before treaty times and after the question is how long will the Government continue to ignore that our tribe is recognized by almost everyone else but them. We feel that recognition is not the word but clarification of our status is long overdue. We will not go away, we will only fight until justice prevails. We feel that the process we must go thru is very wasteful and frustrating Why should the indigenous tribe of Seattle prove who they are according to another race's rules and regulations? Are we to face more rules, diffrent regulations and empty promises until the Government feels we will go away? They are mistaken if they feel this plan will work. We have strong documentation and a good sound history and only want what is right for our people. We leave you with a portion of an Affidavit from a Duwamish Chief who is deceased now. His name is Charley Satiacum and this was written the 16th of April, 1915, which still rings true today.

"I will forget the lies the government has told to me many times, if the government will only now settle with the younger members of my race and of my tribe; there are yet quite a few old members of my tribe who have not been settled with and they need some land to live on; the government promised it, why don't they give some of it at least? I want the treaty agreement remembered in regards to the fishing rights and the rights for hunting game, we want some fish and some game. Governor Stevens told us that the white man's government was honest: now let the white man's government prove it. They promised us lands, give us some land. Don't give all of the land to people from other countries; they do not farm their lands either. They just buy and hold the lands why not give the Indians some of the lands Governor Stevens promised them when he made little reservations? I don't like to have my people all of them driven from one place to another and then told them that they don't own the land. Give them a place where they can live and fish or hunt a little. Of about twelve hundred Indians that once belonged to the Duwamish Tribe at one time about fifty or sixty years ago there are now about three-hundred and twenty all told. Among the treaty makers or who was there at the time that Governor Stevens was agent of the Indians of this district, was one that died a few days ago. His name was James Moses, and he with many others attempted many times to make a settlement with Governor Stevens at the request of the Indians at Renton. James Moses was sent to Olympia and he had with others at that time been promised land settlement or that the Indians of the Duwamish Tribe would at a very near date be given land on account of so many of the Duwamish Indians helping said Governor Stevens: this was in and during the years 1855 and 1859. James Moses died a few days ago and hundreds of other Indians of the Duwamish Tribe have died waiting for their land promised them and the land has not yet been given them. Many of them wander about from one place to another when they get drove off from one place they go to another and all are yet waiting for their allotments somewhere. I, Charley Satiacum would die happy if I had the pleasure of seeing my people of the Duwamish Tribe alloted some land. My heart aches every day thinking about the way my people are treated by the government of the white race and I would be happy is the Government would settle at this late, even if it is over sixty years or more since a treaty was made, where we was to have little homes for ourselves and our children. Oh! great white Father, give us justice even at this late date.

This cry continues in the hearts of our elders and the young. Why not settle at this late date or will the injustice keep the hearts of the Duwamish people saddened and perish as Chief Satiacum? It is our hope that the wrong will be corrected and that everyone will benefit from the justice that will prevail.

PREPARED STATEMENT OF WAYNE SUTTLES, PH.D, PORTLAND STATE UNIVERSITY, WASHINGTON

I was asked to speak, from my knowledge of traditional Indian culture in Western Washington, on matters relevant to the question of federal acknowledgement in that region. Accordingly I would like to begin with two common misconceptions about the Indian peoples of the region.

There are two images of American Indian society that may be true elsewhere but do not correspond to the way the Indian peoples of Western Washington lived at the time when their country was explored and then occupied in the late 18th and early 19th centuries. These are the image of chiefly authority and the image of the self-sufficient little society. Initially, agents of the United States government itself, in order to facilitate the transfer of title and establish legitimate relations with the Indians, helped create these false images. Now, ironically, other agents of the govenment seem to be requiring Western Washington Indians who seek recognition to produce evidence that the government's false assumptions about them are true.

THE IMAGE OF CHIEFLY AUTHORITY

This image, a very popular one, is that of tribal organization—bands headed by band chiefs combined into tribes under the authority of tribal chiefs. This is the image suggested by the treaties of the 1850s. The Treaty of Point Elliott concluded in 1855 refers to "chiefs, headmen, and delegates of . . . tribes and bands of Indians." Four of the Indian signers are identified as "chiefs," Seattle of the Duwamish and Suquamish, Pat-ka-nam of the Snoqualmie and Snohomish and other tribes, Chow-its-hoot of the Lummi and other tribes, and Goliah of the Skagit and other tribes. Other signers appear as subchiefs or simply members of tribes or bands. The assignment of tribes to reservations suggests the same kind of superordinate-subordinate relationship. For example, the Nooksack and the Samish, as subordinate to the Lummi, were expected to move onto the Lummi Reservation, consistent with Chow-its-hoot's supposed status as the paramount chief of the whole region north of the present Anacortes.

This image of the tribe ruled by a powerful chief has a certain romantic appeal—not only for modern Indians but for the descendants of White pioneers, whose heroism seems the greater the more formidable the Natives they settled among. It also appeals to some anthropologists who like to pigeonhole peoples into categories like "bands," "tribes," and "chiefdoms." But the image is false. From the earliest Spanish and British accounts of the 1790s, through Hudson's Bay Company records of the 1820s and '30s, to the correspondence relating to the treaties themselves, there is little to support this image and much to challenge it.

Advice that George Gibbs gave Governor I. I. Stevens in 1854 is especially instructive. In a letter concerning a murder case, Gibbs (quoted in Lane 1973:17) advised Stevens that chiefs lacked the authority to punish murders and so

"The wisest course for the government to pursue seems to be to aggrandize a few principal chiefs at the expense of the petty tyees [*tyee* is Chinook Jargon for 'chief']; to recognize the former alone and to hold them responsible to all acts committed by their people. They will thus be compelled to exercise an authority which they did not before possess."

About the same time Gibbs (quoted in Lane 1973:18) recommended that

"One principle of policy, in particular, should be observed—the union of small bands under a single head."

It is clear that this is precisely what Stevens tried to do in 1855, when he made the Samish subordinate to the Lummi, the Skykomish to the Snohomish, and so on.

To reject this image of tribal organization or chiefdoms as appropriate to pre-treaty Native society, however, is not to deny the existence of leaders with influence beyond their households and villages. But over much if not all of Western Washington, the influence of these leaders was no more than that; leaders did not hold offices that gave them authority over anyone beyond the limits of their households or, at most, their villages.

I should mention as an exception that during the 1840s and '50s, probably as a result of contact with people east of the Cascades and the teachings of the first missionaries, an Upper Skagit leader (Collins 1974:32–36) and perhaps a few others experimented in using the control of New Christian-influence rituals as a means of creating coercive authority. "Pat-ka-nam may have been such a leader among the Snoqualmie." But this was a late, local development.

THE IMAGE OF THE SELF-SUFFICIENT LITTLE SOCIETY

The other false image is that of a region peopled by wholly autonomous villages or tribes, each a self-contained, homogenous "little community" or independent society. This image is not dependent on the image of chiefly authority but may be supported by it; the argument can run: if there is authority there must be limits and those limits must define a community.

This image was once dear to the hearts of some sociologists and social anthropologists, perhaps because it allowed them to suppose that in the little community they had a manageable model of large and unmanageable societies like our own. G.P. Murdock (1949, ch. 5) asserted that "the community" was a universal human group and described it as "the principal focus of associative life," "the primary seat of social control," having "a culture of its own," and forming an "in-group" antagonistic to all others. This image seems also to be the image of the "tribe" employed by the Federal Acknowledgement Program and its successors. But for Western Washington, in fact, for much of Western North America, this image too is false.

THE STRUCTURE OF ABORIGINAL SOCIETY

The real aboriginal society, most of us working in this region see it, was an unbounded network consisting of many local groups, each managing it own resources, using those resources as hosts in relation to other local groups, and expecting reciprocity from those other groups. This social structure related to environmental diversity. Western Washington was an environment in which many different resources were restricted in when and when they were available. The social system allowed for the exchange of resources and some movement of people, enough to keep a fairly good balance between people and resources, while preventing so much as to overuse any one place (Suttles 1960; Collins 1979).

VILLAGE AND TRIBE

The village was a group of plank houses each occupied during the winter by a group of related families. The household had one or more summer campsites for fishing, hunting, and gathering roots, berries, and shellfish. Each family within the household had its own fire and stores of food, but they cooperated in economic and social activities, often under the leadership of a house head. The households within the village shared a common territory, and they too cooperated in economic and social activities. Often the head of the most prosperous household was recognized as the leader of the village in its relations with other villages, but this was not always so. Some villages seem not to have had a single village headman. In any case, in daily life there were no all-purpose leaders. Professional hunters led hunting expeditions, professional led warriors war parties, and so on.

The "tribe, " as the word was used in pre-treaty times, might have been a single village or a cluster or string of villages, usually one larger than the others, within a small river drainage or or a segment of a larger one or on an inlet or saltwater channel. Its members spoke the same dialect of one of the languages of the region, shared a territory, and were identified by others with a common name, often that of the principal village. But the villages grouped together under a common tribal name did not constitute any kind of political unit. In fact, they did not necessarily cooperate in warfare. The village and the household were the basic units of society.

VILLAGE ORGANIZATION

Villages were at times in conflict with more distant neighbors. But they generally had close relaionships with near neighbors. These relationships were established by marriage. A proper marriage was with someone of equal status in another village. Families in any one village were linked with ties of marriage to families in other villages. Differences in language and culture were not obstacles to marriage, which were often arranged between families in villages that spoke different dialects or languages and to some degree followed different customs. In fact, thee were advantages to establishing marriage ties with families in villages with different resources, which might mean different customs and different speech. Marriage ties involved obligations between in-laws, including exchanges of food and property and access to each others' resources (Suttles 1960).

Any one family in a village, was not likely to have ties with all surrounding villages, but the several families within a village could have links with all, giving the village as a whole the security that a single family could not have had.

The families within a village thus formed an alliance vis-a-vis other villages. But at the same time the families within a village were competing with one another for status and for what was almost the same thing, the best ties with other villages. This created a kind of tension within the village, and the ties a fmaily had with their in-laws and relatives in another village could be just as close or closer than the ties they had with other, rival families in their own.

Many or most individuals were the children of parents from different villages. Often a person's four grandparents came from four different places. people prided themselves on such multiple connections. Good ties with another place meant the people there would let you share seasonally in their resources or even take you in if you chose to move, as people did fairly freely.

Thus there was no such thing as a homogenous community composed of people who shared the same set of ancestors going back to some legendary past and only those ancestors. The Twana village of Skokomish was never composed of people of all-Skokomish descent, nor were all persons of Skokomish descent ever found living at Skokomish. And one could say the same for every village in the region. In each village there was a core of persons who were born and raised there and traced their descent, though father or mother, to some villager in the legendary past, but each of these persons had other ancestors from elsewhere. The wives and husbands of this core were persons who had been born and raised elsewhere. In addition, there might be relatives who had been born and raised elsewhere but whose descent from a villager gave them the right to come and reside there.

STATUS

Within the village, families and their heads differed in status. Prerequisites for high status were good birth (descent from people of high status), good character (the qualities that inspired trust), and generosity. To show generosity a man had to have the means. He had to have plenty of food for both the day-to-day support of a large household and for occasional feasts to which neighboring households were invited. And he had to have wealth (durable goods such as a blankets, canoes, etc.) enough to call people from other villages to the great give-aways called "potlatches." To have such means, it was believed, a person had to have help from the non-human world. To get this help, every adolescent went into the wilderness for a period of fasting and purification that, for most, culminated in a vision experience. From the being encountered in the vision, the young person was believed to acquire skills that manifested themselves later in life. The being itself might later returned to possess its human partner and be manifested as a song in what is now generally called the "spirit dance." A high-status person or greater leader thus necessarily had a powerful "guardian spirit" that showed itself dramatically in this dance.

Recognition of high status did not come simply from a person's own fellow villagers. High status could be demonstrated only through such intervillage activities as the potlatch and the spirit dance. Recognition came from the people of other villages, when they attended as guests and reciprocated as hosts of such events. This is the conclusion W. W. Elmendorf (1971:363) reached, on the basis of his work with the Skokomish and a survey of the literature, when he wrote:

"Coast Salish social rank within village communities depended on a total set of inter-community relations within a network specific to each community."

The basis of social prominence and influence was recognition outside one's own village. The Lummi leader Chow-its-hoot, according to traditions I recorded at Lummi in the 1940s, became rich as a shaman and gambler and gave a number of great potlatches, inviting guests from many other tribes.

NETWORK AND LOCAL GROUP

The networks that Elmendorf mentions were different for every village or "village community" (to use his term for a closely related cluster of villages). The Skokomish were the center of a network that overlapped with a network that had the Clallam village at Port Discovery at its center. The network centered on Port Discovery overlapped with one that had the Lummi village at Gooseberry Point at its center. And so it was from one end of the region to the other and beyond. Within the region, conflict could occur, but it was usually between people in non-overlapping networks. Within the region, there were differneces in the kinds of intervillage events that occurred. For example, Skokomish men with the vision power for it participated in inter-village eating contests with villages to the south but not with those to the north, where such contests were not held. And Skokomish members of a regional secret society participated in initiations with members in villages to the north, but not to the south, where there were no members (Elmendorf 1960:302). The villages or "tribes" within this region thus formed a social continuum within which there were both linguistic and cultural differences (Suttles 1987b).

All this does not at all argue against the existence of villages or "tribes" in the sense proper to this region. These were real and generally enduring entities. But they were only parts of a much larger regional society.

CULTURE CHANGE

Great changes have occurred since the first non-Indians arrived to stay. Even before the treaties, during the domination of the Hudson's Bay Company, the Indians were adopting new tools, new kinds of clothing, and new religious practices. Some Indian women married non-Indian men, forming new alliances that would work, their families hoped, like the traditional ones.

With the treaties and reservations a major change occurred in that some local groups were allowed to stay in their home territories with at least some of their resource bases, while others lost much or all of what gave them their position in the regional economic network.

In the half century after the treaties, the Indians adopted much of the material part of Northwest frontier life. They became loggers, commercial fishermen, cannery workers, farmers, seasonal agricultural laborers, and so on. But they also kept much that was less visible. There was great continuity—in social relations, beliefs, and values.

What would one look for today as evidence of cultural continuity and survival? In social relations we should expect to find local exogamy—marriage with members of other Indian groups and even non-Indians, multiple ties—people able to identify themselves with the "tribes" of their four grandparents, mobility—some shifts in residence and identity, reliance on kinfolk, and support of leaders engaged in intergroup activities. These activities might include winter dancing with potlatch-like activities (especially in the northern part of region), canoe races, the Indian Shaker Church, bone games, curing ceremonies, the Indian Pentecostal church (in the southern part of the region), the funerals of important persons, regional Indian political organizations. We should expect the status of leaders to be very much dependent on their participation in such intergroup activities and their achievement of recognition by members of other groups. As evidence of the survival of values, we should expect to find pride in ancestry, family solidarity, and perhaps above all respect for the autonomy of the individual (Amoss 1977). Insofar as the Federal Acknowledgement Program and its successors have ignored these features of contemporary Indian life, they have missed the reality of cultural continuity; insofar as they have asked for evidence of a classic close-knit "community," they are seeking something that never was.

CONCLUSIONS

I began with the irony of Indians having to prove the myths of non-Indians, being expected (for purposes of claims or mere recognition) to produce evidence that the government's false assumptions about them are true. I have tried to show what these false assumptions are and what Native society was really like. Let me conclude with what I think this analysis of Native society implies

In 1855 most of the Indian people may not have understood that the Indian signers of the treaties were negotiating on behalf of groups as large as Stevens and Gibbs defined them nor imagined that the signatures of others would be binding upon themselves. It seems likely that, in the view of many Indians, the signers were representing no more than their own households or, at most, villages. To be true to what Native perceptions probably were at the time of the treaties, the government might now withdraw recognition from all persons enrolled in recognized tribes who cannot prove descent from a treaty signer. This would of course be a cruel and costly if not impssible task, and I am certainly not recommending it. But a more honest and more humane alternative would be to abandon the fictions of chiefly authority and tribal self-sufficiency and to acknowledge the treaties as agreements between the United States and a single regional Indian society.

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TESTIMONY OF CHARLES MECHALS
CHINOOK INDIAN TRIBE

Before the Senate Committee on Indian Affairs

May 26, 1988

My name is Charles F. Mechals and I reside at 2 Dungeness Meadows, Sequim, Washington, 98382. I am a member of the Tribal Council of the Chinook Indian Tribe, Chinook, Washington, and have been active in tribal affairs all of my life. I was born in 1914 at the time my tribe was seeking allotments on the Quinau[illegible] Reservation pursuant to the Allotment Act of March 4, [illegible]11. I am an original allottee on that reservation, having secured Allotment No. 2011. My mother and my six brothers and sisters were also allotted lands as Chinook Indians on the Quinault Reservation.

I have never lived at Quinault. My family has resided for centuries on the north bank of the Columbia River at its mouth. My mother was born in the village of Chinookville in 1882, while her mother, Emeline, was born in the Indian village of Wallicut a few miles farther to the west. Both of my mother's parents, Joseph and Emeline Petit, were members of the Chinook Indian Tribe. In 1906 Dr. Charles

McChesney of the BIA secured affidavits of several tribal elders identifying that my direct ancestors, Elmermach (of my grandfather's family), and Tonwah (of my grandmother's family) were alive at the time of the 1851 treaty with the Chinook.

As a boy and as a young man I worked in the Indian fishing crews on the Columbia River at Sand Island and Peacock Spit. Members of the Chinook Tribe contracted as a crew to fish with horse-drawn seine nets for the salmon canneries located on Baker's Bay. Gus Davis, Roland Charley, and Joe Mechals, my brother, were Chinooks who fished on the crews. I continued this work through 1935 when Adolph Sund, another Chinook, contracted for us to fish for P. J. McGowan and Company. Adolph subsequently served for several years as our tribal chairman in the 1970s.

In 1935 the BIA registered many of the members of the Chinook Indian Tribe to vote on the matter of the approval of IRA at Quinault. My mother and my elder brothers, Joseph and Earl, were so certified as voters. None of them resided at Quinault. They were not members of the Quinault Tribe. I am not a member of the Quinault Tribe. I am a Chinook who received an allotment at Quinault because the Supreme Court found in Halbert v. United States, 183 U.S. 753 (1931) that my tribe possessed a post-treaty affiliation under the Treaty of Olympia. The Ninth Circuit in Wahkiakum Band of Chinook Indians v. Bateman, et al., 655 F.2d 176 (9th Cir.

1981) and in Williams v. Clark, 742 F.2d 549 (9th Cir. 1984) affirmed that the Chinooks retain tribal rights to fish and that tribes for whom the Quinault Reservation was created have property rights within that reservation.

In spite of numerous enrollments of my tribe by the BIA, allotments to hundreds of Chinooks pursuant to the Halbert decision, and my tribe's successful litigation before the Claims Court and the Indians Claims Commission over the taking of our aboriginal lands, the BIA administratively terminated our federal relationship in the 1950s. This action is unconscionable and without legality.

The measures of the existence of the Chinook Indian Tribe and its federal relationship are abundantly documented in the histories of the Pacific Northwest and in several specific actions of the federal government. I want to enumerate some of those actions:

- The BIA has enrolled Chinooks in 1906, 1913, 1914, and 1919.
- The BIA certified Chinook ancestry and issued allotments to hundreds of Chinooks pursuant to the Halbert decision of 1931.
- The BIA administers probate, heirship, and trust status of lands belonging to hundreds of Chinooks in 1988.
- The BIA administers in 1988 the judgment fund the

Chinook Indian Tribe secured in Docket 234, Indian Claims Commission.

- The BIA has admitted members of my family to BIA schools and hospitals because they are members of the Chinook Indian Tribe.
- The BIA negotiated treaties with my tribe in 1851 and 1855. Although neither was ratified, the Supreme Court ruled the Chinooks have a post-treaty affiliation under the ratified Treaty of Olympia (1855).
- Executive orders have denominated the Chinook Indian Tribe (as affirmed in the Halbert decision).
- Acts of Congress have denominated the Chinook Indian Tribe, specifically in the matter of the tribe's first land claims case, 1899-1914.
- Court orders have denominated the Chinook Indian Tribe.
- The federal government has treated the Chinook Indian Tribe as possessing collective rights in land and funds in cases litigated and won before the Claims Court and the Indian Claims Commission.

The record of the history of the Chinook Indian Tribe, its federal relationship, the identity of its members, and the persistence of its tribal nature are attested to throughout time. Charles E. Roblin, who visited our families to prepare the 1919 roll, was struck by the retention of Indian ways among our people though we had had almost continuous contact with Euro-Americans since 1792. Writing to the Secretary of the Interior in 1919, Roblin observed:

> In Pacific, Wahkiakum, and Gray's Harbor Counties, Washington, there are a number of small Indian settlements, comprising the remnants of the tribes originally inhabiting the country around the harbors and inlets of the Pacific Coast and Columbia river. Those have almost entirely lost their character as Indian settlements; and yet, so far as it has been possible, the Indians can be said to have kept up their 'tribal relations' and communal life. They can hardly be said to have 'severed tribal relations . . . ."

I was alive at the time of Roblin's assessment and can attest to the validity of his observation. We have retained our tribal relations. They are expressed in political terms through the operation since 1925 of our elected tribal council. They are expressed in the ways in which allottees handle mutual matters of concern about their lands. They are also expressed in the commitment of our people to a way of life common to our ancestors. My life's work was in the Pacific salmon fisheries. I became a cannery manager and retained a lifelong interest in fishing and fish processing.

Hundreds of people have expressed to me their dismay that the Chinook Indian Tribe is not recognized by the United States government. With my testimony I am submitting a large file of letters attesting to this matter.

This is what I wanted to say. Please consider this matter carefully. Thank you.

TESTIMONY OF DONALD MECHALS,
CHINOOK INDIAN TRIBE

Before the Senate Committee on Indian Affairs
May 26, 1988

My name is Donald Mechals. I reside in the village of Chinook, Washington, 98614, where I am the chairman of the Chinook Indian Tribe. I thank you for the opportunity to present testimony in this hearing on behalf of my tribe. I have for the record a general statement, "Testimony of the Chinook Indian Tribe," as well as this personal statement.

In the eyes of the government of the United States, I am a "non-competent Indian." I have been so considered most of my life because, as a child, I was alloted lands in trust on the Quinault Reservation. I secured my allotment along with six other brothers and sisters because I was a member of the Chinook Indian Tribe. I trace my ancestry through my mother, another Chinook allottee, and both of her parents, each a member of Chinook Indian Tribe. My great grandmother Amelia (Aubichon) Petit and her full-blood mother, Elmermach, were both alive at time of the 1851 treaty with the Chinooks. Another great grandmother, Mary Ann (Pickernell) Bouten, and her full-blood mother, Tonwah, were also alive at time of that treaty. My ancestor Oswallicks (As-Kal-wilsh) was a signer of that treaty.

I suppose a question arises: "If you are an allottee at Quinault, Mr. Mechals, why do you not live at Quinault?" The answer is simple. My family and my tribe have always resided at the mouth of the Columbia River. We are fishing and trading people. My ancestors sold salmon to Capt. Robert Gray the first day this American explorer crossed the bar of the Columbia. The Quinaults were our enemies in times past and we never considered moving to the impenetrable cedar forests and swamps on that reservation. My tribe's objections to that proposal contributed to the break-up of the Chehalis River Treaty Council in February, 1855. When I was a child, my family never considered trying to live on our allotments. Our livelihood came from the river and the sea. Our allotments had no access. Much of the land was totally unsuited for residency.

Because the Chinook Indian Tribe by 1935 had become the largest land-holding tribe on the Quinault Reservation, the BIA enrolled adult Chinooks to vote on IRA. My mother was one of those so registered and who voted. It was our understanding that if we approved IRA the BIA would organize a confederated tribal government on the Quinault Reservation where all land-owning tribes would share in the decision-making. My mother and other Chinooks were excited about this possibility and they carried the vote. The majority of the voters in 1935 endorsed IRA.

In spite of that favorable vote, the BIA bowed to the self-interest of the small Quinault Tribe and declined to organize the reservation under IRA. The Quinaults did not vote for the IRA and do not have an IRA constitution but receive all the benefits of the IRA. From that time forward the Quinault Nation and the BIA have sought to exclude the Chinook Indian Tribe from any say in the governance of the reservation and have consistently rejected efforts of Chinooks to secure membership in the Quinault Nation unless they meet their one-quarter blood quantum requirement. Many people of my tribe have applied for adoption with very little success. Of the 1,235 members of the Chinook Indian Tribe in 1988 only 68 or 5.4% have Quinault membership. I believe that virtually every one of those, myself included, would give up that affiliation would the BIA again deal directly with our tribe. I only sought membership at Quinault out of an effort to protect my landed interests, my own allotment and others which I own or have inherited.

I have served as chairman of the Chinook Indian Tribe for nearly 10 years. I have attended meetings of the tribe throughout the past 55 years. I want you to know that we once had a federal relationship. My family members attended BIA schools, received health services at the Cushman hospital, and that BIA health and welfare workers came to Pacific County to promote Johnson-O'Malley Act programs and attempt to eradicate tuberculosis, especially among our tribal families at Bay Center, Washington. My tribe opposed Termination in 1954 and attended two meetings called by the BIA to air the draft Western Washington Termination Act. Even though Congress failed to pass that law, the BIA administratively terminated us anyway.

The members of my tribe are caught in a "never-never land." They are, on one hand, "non-competent Indians" in the matters of their lands, estates, and Indian Money accounts, yet they are not eligible for Indian Health Service, BIA technical assistance, and tribal programs such as housing, or educational aid. My people need all of these things.

Unemployment and underemployment did not go away when the BIA terminated us in the 1950s.

Poor health, alcoholism, heart-related problems, diabetes, and obesity did not go away when the BIA terminated us in the 1950s.

Lack of esteem and low feelings of self-worth did not go away when the BIA terminated us in the 1950s.

Poor housing and limited incomes to cope with life's needs did not go away when the BIA terminated us in the 1950s.

These problems persisted, only after 1955 they were invisible. They were unreported, unnoted, and unattended to. This was strange, for as I mentioned, hundreds of us were--for land purposes--"non-competent Indians." But for tribal purposes we were effectively non-Indian. The Chinook Indian Tribe had become inconvenient to the BIA and it eliminated us.

I have a simple question for you today. By what law or under what authority did the Bureau of Indian Affairs have the right to terminate the Chinook Indian Tribe? I have written to and asked the BIA many times about this matter but do not get an answer.

When the American Indian Policy Review Commission examined the history of my tribe in 1976, it found that the Chinook Indian Tribe met 14 of the 15 criteria in Felix Cohen's Handbook of Federal Indian Law to be a "tribe." The Commission finding was that my tribe's only failing was that it lacked a ratified treaty. The U. S. Supreme Court ruled in Halbert v. U. S. (1931), 183 U.S. 756, 757, that the Chinook Indian Tribe had a post-treaty affiliation to the ratified Treaty of Olympia (12 Stat. 971). It was this Supreme Court ruling which led to my allotment, that of my family, and that of hundreds of other Chinooks. We only secured allotment because the Treaty of Olympia, as interpreted by the Supreme Court, shaped our tribe's relationship with the United States.

I ask you to expedite the matter of restoring the government-to-government relationship between the United States and the Chinook Indian Tribe. We have petitioned, persisted, and exercised patience. The BIA's demand that we use the Federal Acknowledgment Program is incomprehensible since there is no evidence of any legal authority for the termination of our recognition. Our treaty status as affirmed by the Supreme Court is a determining factor.

Our situation is critical and we need your help. On behalf of my tribe, I thank you.

TESTIMONY OF COWLITZ INDIAN TRIBE

By

Marsha Williams

Before the Senate Select Committee on Indian Affairs

May 26. 1988

The Cowlitz Indian Tribe of the State of Washington thanks the members of the Senate Select Committee on Indian Affairs for this opportunity to present testimony in the oversight hearing on the operations of the Federal Acknowledgement Program. The Cowlitz contend that we should never have been compelled by the Bureau of Indian Affairs to participate in this program. The post-treaty affiliation of the Cowlitz Indian Tribe under the ratified Treaty of Olympia (1855) (affirmed by the U. S. Supreme Court (283 U.S. 756. 759. 1931)), formally recognized the government-to-government relationships between the Cowlitz and the United States. The Cowlitz in this testimony want to summarize briefly our history and the nature of our present "non-federally recognized" status.

1. Location and Membership

The Cowlitz Indian Tribe occupied an extensive area in southwestern Washington at the time of Euro-American exploration, fur trade. and settlement in the first half of the nineteenth century. As late as 1850, the tribe possessed 29 permanent villages along the Cowlitz River and had additional villages in the drainage of the Lewis River, the next watershed to the south and east.

Dr. Verne Frederick Ray, whose field work commenced with Cowlitz informants in 1928, has enumerated the extensive history of early contact with the Cowlitz Tribe in his Handbook of Cowlitz Indians (1974). In that volume Professor Ray covered a series of topics, including villages, lifeways, trade relationships, and language distribution of the tribe.

In 1988 the Cowlitz Indian Tribe has 1,400 enrolled members. Each member has an ancestry chart documenting his or her descent from Cowlitz enrolled by Charles E. Roblin in 1919. A special enrollment officer, Roblin worked among the Cowlitz from 1916 to 1919 to secure affidavits, records of birth, and family relationships as part of a major Bureau of Indian Affairs project to enroll members of the tribe. The 1919 Roblin enumeration is the base roll for the Cowlitz Tribe. The Roblin records, preserved in the National Archives, are supplemented by enumeration of the Cowlitz in the 1900 and 1910 decennial census schedules.

The Cowlitz Indian Tribe maintains its offices at 311 East 26th Street, Tacoma, Washington 98421.

2. Non-Federally Recognized Status

The issue most pressing to the Cowlitz Indian Tribe today is the Bureau of Indian Affairs presumption that the tribe is not "federally recognized". The BIA is unable to cite any statute, executive order, or secretarial memorandum terminating tribal recognition. It is the conviction of the Cowlitz that there is no such authority. Rather, the BIA found it convenient in the 1950s to force illegal "administrative termination" on the Cowlitz at the time of the failure of the proposed Western Washington Termination Act. Since that time the BIA has acted as if the Cowlitz did not exist as a tribe and confirmed that position when it told the Cowlitz that we must participate in the Federal Acknowledgement Program if we wanted to regain "recognized" status.

In 1976 the American Indian Policy Review Commission examined the criteria identifying a "tribe" in Felix Cohen's definitive Handbook of Federal Indian Law. In its analysis of the situation of the Cowlitz, the Commission found that the tribe met 14 of 15 criteria. The only deficiency, reported the Commission, was the failure of the Cowlitz to possess a ratified treaty. The Commission was apparently unaware of the case of Halbert v. United States (1931) wherein the Supreme Court under the ratified Treaty of Olympia (1855).

3. Treaty Relationships with the United States

In 1851, Superintendent Anson Dart began treaty negotiations with Indian tribes along the lower Columbia River. Although he secured agreements with several neighbors of the Cowlitz, his service as a BIA official ended before he met with our ancestors. In February 1855, however, Governor Isaac I. Stevens summoned the Cowlitz to the Chehalis River Treaty Council. In a protracted meeting over several days, Stevens attempted to persuade our tribe and all others in southwestern Washington to cede 100% of our lands and remove ourselves to the central Washington coast. The projected reservation was a rain forest, very unlike the open meadows and mixed hunting and fishing areas occupied by our people. Furthermore, Stevens proposed confederating the Cowlitz with our ages-old enemies, the Quinaults. When the Cowlitz, Chinook, and Chehalis refused Stevens's demands, he angrily stormed out of the treaty council.

The Cowlitz thus never ceded any of our aboriginal homeland to the United States. On June 5, 1850, however, Congress passed a law (9 Stat. 437) extending the Indian Trade and Intercourse Act of 1834 (4 Stat. 729) to Oregon Territory. This statute thus confirmed that "Indian law and custom" prevailed in all of unceded Cowlitz lands in southwestern Washington.

The Treaty of Olympia (1855) (12 Stat. 971) created the original Quinault Reservation on the central coast of Washington. Article 6 of that treaty confirmed the right of the President to enlarge, reduce, move, allot, or confederate the Indians of that reservation. On November 4, 1873, President Ulysses S. Grant, aware of the tenuous situation of the Cowlitz and other non-treated tribes in southwestern Washington, enlarged the Quinault Reservation by executive order. His order specifically referenced that the new reservation was for the "fish-eating Indians on the Pacific Coast" (Kappler, "Indian Affairs: Laws and Treaties," Vol. II, p. 923).

In 1911, Congress passed an Allotment Act (36 Stat. 1345) for the Quinault Reservation. When the Cowlitz and other southwestern Washington tribes attempted to secure allotments under this statute we were opposed by the Quinault Tribe. The Cowlitz and other off-reservation tribes then formed the Northwestern Federation of American Indians and began a spirited program to secure allotments and other entitlements. The activities of the Cowlitz led, for example, to the special BIA enrollment work of Charles E. Roblin in 1916-19.

Ultimately the matter of allotment at Quinault went before the courts in the case of Halbert v. United States (1931). The Supreme Court found that the Treaty of Olympia contained "a provision under which affiliation might be brought about" (283 U.S. at 759). The court found that President Grant's executive order or 1873 brought about the post-treaty affiliation of the Cowlitz and other tribes. The Court stated:

> In 1855, the Quinaielt, Quillehute (also the Quileute), Chehalis, Chinook, and Cowlitz Indians were neighboring tribes in the southwesterly section of what is now the state of Washington. They were all known as 'fish-eating Indians' and lived in small villages adjacent to the Pacific coast and the lower reaches of the Columbia River. The Quits and Ozettes were also fish-eating tribes living in coast villages a little north of the others (183 U.S. at 756).

The Halbert decision found that individual members of the Cowlitz Tribe were entitled to allotments within the Quinault Reservation because, as a matter of law, it was affiliated with the signatory tribes to the Treaty of Olympia.

At least 57 Cowlitz secured allotments on the Quinault Reservation subsequent to this Supreme Court decision. At least another 20 Cowlitz secured "Fourth Section" (Public Domain) allotments between 1888 and 1945 within the tribe's traditional homeland. The BIA also assisted other Cowlitz in purchasing lands and transferring those parcels into trust status.

The Cowlitz Indian Tribe thus has a treaty affiliation affirmed by the Supreme Court and recognized by the Bureau of Indian Affairs in its promulgation of the allotment program. To this day, dozens of Cowlitz are "non-competent Indians" whose lands are in trust status, either on the Quinault Reservation or in the public domain in southwestern Washington.

4. Brief History of Federal Recognition

The Cowlitz Indian Tribe has worked for 11 years to research and write a petition documenting, among other things, the history of federal recognition. The analysis of these records constitutes 164 single-spaced pages in Volume 1 of the tribe's petition. Among the more important examples of the federal relationships are the following:

* The BIA in 1988 holds in trust the $6.0 million judgment fund of the Cowlitz Tribe (Docket 218).
* The BIA serves as the trustee of allotments of Cowlitz Indians on the Quinault Reservation and the public domain.
* The BIA approved attorney contracts for the Cowlitz Tribe.
* The BIA has enrolled Cowlitz children in BIA schools.
* The BIA has monitored the attendance of Cowlitz children in public schools.
* On 13 occasions between December 16, 1915, and December 7, 1982, Congress considered legislation relating to the Cowlitz Indian Tribe.
* The Cowlitz Tribe successfully litigated Docket 218 before the Indian Claims Commission.

* The proposed Western Washington Termination Act identified the Cowlitz as a tribe slated for "termination."

* The BIA registered members of the Cowlitz Tribe to vote on IRA on the Quinault Reservation in 1935.

* The BIA enrolled the Cowlitz Tribe on the Roblin Roll of 1919.

* The BIA has paid attorney fees in matters relating to members of the Cowlitz Tribe.

* The BIA has admitted Cowlitz Indians to BIA hospitals.

* The BIA and the State of Washington administered the Blue Card program, certifying Cowlitz Indians as having Indian fishing rights in the State of Washington.

These examples are drawn from the abundant evidence of federal recognition documented in the records held by the Cowlitz Tribe and the National Archives and Records Administration.

5. Exercise of Tribal Political Authority

The Cowlitz Tribe has maintained a formal, tribal, government with elected officers since 1916. Prior to that date the tribe had traditional chiefs and headmen. The political structure of the tribe was of particular interest to anthropologist, Verne F. Ray, who first wrote about the tribe and second served as an expert witness in the Cowlitz land claims case. In summary assessment of his work over 54 years with the tribe, Dr. Ray appeared before this committee on December 7, 1982, to speak to S. 2931 and stated:

Finally, based on my work and training and experience as an

> anthropologist, I have reached the professional opinion that the Cowlitz Indian Tribe which is now before this committee is the political continuation of, and successor in interest to, the aboriginal Cowlitz Tribe.

The Cowlitz Tribe has tenaciously looked after the interests of our members. This record of political activity is mirrored not only in the formal structure of the tribe and its meetings but also in our securing of legal assistance over the past 70 years, the introduction of 13 bills before Congress, the successful litigation of our claims case, the efforts to protect our fishing rights (such as in The Cowlitz Tribe of Indians, Chinook Tribe, Inc., et al. v. Ralph Larson, et al., Civil No. C80-166T, Dist. Court of the U.S. for the Western Dist. of Washington at Tacoma, and The Cowlitz Tribe of Indians, Chinook Tribe, Inc., et al. v. Bateman, et al., Civil No. 80-391, Dist. Court of the U. S. for the Dist. of Oregon), and the work to protect the interests of Cowlitz allottees on the Quinault Reservation.

6. Situation of the Cowlitz in 1988

The question may arise: "Why do the Cowlitz not go and enroll on the Quinault Reservation?" The answer to that is that the Cowlitz have never lived at Quinault, did not remove to Quinault, and, for the most part, were refused enrollment at Quinault by the Quinault Nation. In 1935, the Cowlitz and other allottees by majority vote endorsed IRA and the formation of a confederated tribal government on their reservation. The BIA has bowed, however, to the political interest of the Quinaults and declined to organize that reservation pursuant to the favorable vote on IRA.

Down to the 1950s, the Cowlitz possessed a federal relationship. The dimensions of that "recognition" were mirrored not only in the program activities of the BIA but also in the assignment of agency responsibility for the Cowlitz commencing in the 1850s and the reporting on numbers and condition of the Cowlitz over several decades by the BIA in its annual reports. As the Western Washington Termination bill loomed in 1954, the BIA repeatedly summoned Cowlitz leaders to meetings, informed them of P.L. 280 proposals, and engaged the tribe for the impacts of "termination." When the Termination Act failed to pass Congress, the BIA without statutory authority terminated the Cowlitz.

The disabilities inflicted on the Cowlitz by the BIA are many:

* No longer are Cowlitz children admitted to BIA schools.
* No longer are Cowlitz Indians covered by Indian Health Service.
* The BIA provides no technical assistance, core management funds, or programs for the Cowlitz.
* Although the BIA administers the $6,000,000 Cowlitz judgement fund, it claims it has no monies to check the Cowlitz roll or the descent of members from the Roblin Roll of 1919.

7. Conclusion

The Cowlitz earnestly seek the assistance of the Senate in clarifying its tribal status in 1988. The insistence of the BIA that the Cowlitz have to use the Federal Acknowledgement Program is incorrect. As a treaty tribe, the Cowlitz have federal recognition. The American Indian Policy Review Commission attested in 1976 to the standards of "acknowledgement" already met by the tribe.

The Cowlitz ask that the Senate enter this matter and resolve the issue in a timely manner. The limbo status of the Cowlitz Tribe has persisted too long. The disabilities are too many. Action is needed now. Thank you.

WRITTEN TESTIMONY OF THE SAMISH INDIAN TRIBE

SUBMITTED TO THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

MAY 26, 1988

The Samish Indian people greet the honorable members of the Select Committee, and thank you for this opportunity to speak to you of the injustice done to us by the Bureau of Indian Affairs' Branch of Federal Acknowledgment.

We have been following the Acknowledgment carrot or jumping through the Recognition hoop since 1975 when we were forced to submit our first petition to the BIA. The process changed and our petition was returned untouched. We worked closely with Task Force 10 of the American Indian Policy Review Commission established by your predecessors on this committee to provide prima facie evidence of a treaty relationship to be sufficient basis for recognition. Task Force 10 made recommendations to this Committee with prima facie an essential element. The Bureau of Indian Affairs gave assurances to this committee but proceeded to eliminate it as a positive criteria. The 25 C.F.R. Part 54 criteria were not responsive to the committee mandate. In 1983 when the Samish and Snohomish sent representatives to meet with Congress, they voiced the concern over what happened to prima facie. Samish and Snohomish already had received preliminary denials written in obscenely demeaning innuendo as to our origins. Samish requested FAP field notes through the Freedom of Information Act and secured a partial release through a Solicitor's Order. We are still waiting for the balance. No other tribe had appealed a negative finding and we found the process is right back to the same people who were prosecutor, judge, and jury originally. We appealed formally to Secretary Hodel for an independent review of our substantial arguments and documentation but he backed his employees. The appeal process is fundamentally flawed because it is an internal "closed shop" review by the same staff. We have written the President who refers our letters back down the line to Mrs. Elbert who has suggested we stop writing.

Gentlemen, we are here for a third time to testify. We urge you to re-examine the recommendations of the A.I.R.P.C. Task Force 10, and either mandate by legislation or by firm control that treaty relations be considered prima facie evidence (the Cohen doctrine). When Samish exhausted the administrative remedies, we had two options. Today we are pursuing the most appropriate and least costly. We are asking you to enact legislation granting Samish immediate recognition or to direct that the obstacle in our path to re-rcognition of our treaty status be removed. As part of the written records, we are submitting the 1977 Petition for Federal Acknowledgment, the 1979 Petition for Federal Acknowment, the Appeal to Secretary Hodel and other pertinent documentation. We ask that the record be left open for two weeks to allow us to enter additional documentation should the hearing develop the need for it.

I. WHO WE SAMISH ARE.

The sovereign Samish Indian Nation is a party to the Treaty of Point Elliott of January 22, 1855. The Samish continue to exist as a nation and people, and the Treaty itself has never been extinguished by Congress. And only Congress can change a treaty. The contemporary Samish Indian Tribe is directly related, both in organizational terms and family lines, to the Samish who participated in the Point Elliott treaty conference 133 years ago.

We present a copy of the original handwritten Treaty [I-1], certified by the National Archives. This original is important because the later printed copies failed to show "Samish and Lummi" in the heading. We descend from and are related to these people whose marks are on the Treaty. The Samish men, women and children on the treaty grounds at Mukilteo the week of the signing were there, according to our departed Elders, to share some good things, to be protected by the United States, to have a pleasant time. They did not know then that the cost of this would be the loss of our lands--other than what they understood at the time was to be reserved for us exclusively--and the loss of our freedom. They did not know that the good words they heard at Mukilteo would not be honored [I-3, 4a,b,c]. The treaty text was similar to earlier midwest treaties but added three points: reserved fishing, release of slaves, and no trading with Vancouver Island. The actual negotiations were negligible- a few days. The treaty was interpreted by a Snohomish Indian, John Taylor, in the Skykomish tongue and in Chinook jargon. Our Elders said in 1920s that some of the Samish and the Lummis understood a little Skykomish, but the rest only spoke Straits Salish so they did not understand much of the Treaty.

The pre-treaty Samish bloodlines continue today in our families and in our Samish Indian names. In 1986-87, all the major Samish families passed down ancestral names: the Susan Cagey-Nancy Charles family on February 14, 1987, Edwards families on two occasions. At the Samish Gathering October 10, 1987, the Clubshelitsa/Hulholtten family names CO LAHT SU SAH, the Elder and the Younger and E'ATH were given [I-5].

In traditional Indian circles, there is no doubt as to who the Samish people are today, or who their forefathers were. At religious gatherings each winter, Samish are seated together and known by their Samish names.

Only the BIA's genealogist, looking just at old papers written down by non-Indians, questions who we are. She disregards traditional oral history.

II. THE RESERVATION WE WERE PROMISED.

Before going up to meet with the Samish and allied Indian nations at Mukilteo in 1855, the U.S. treaty commisioners prepared an outline of what they would promise us. Under the heading of "reservations," we find: "One on Samish, one on Lummi [II-1, 1-a]." The United States did not establish this Samish reservation as our people expected, however. As recently as 1926, the Samish and other Point Elliott Treaty tribes told the Court of Claims they still expected March Point, near Anacortes, to be set aside as a reservation for the Samish people- near the site of two aboriginal Samish villages and just north of the present-day Swinomish reservation [II-2]. It was not. We worked so hard after that to re-establish a land base somewhere that in 1966 we even talked to the BIA about the possibility of taking over the abandoned Ozette Reservation out on the Pacific coast [II-3]. The BIA gave that land to the Makah Tribe instead. We asked for the old Northern State Hospital site but couldn't qualify because we were non-federally recognized [11-4].

Some confused folks talk as though the Samish renounced their right to land and treaty rights when they all did not go to a reservation. They forget some of our ancestors were orphaned by disease and hostile acts by treaty time. Susan [Cagey] was 8 years old; who determined her choice? There is no simple answer. Allotment records do not show an allotment made to a Samish as a Samish. Some Samish went to a reservation but left because of unfriendly hosts tribes; a few married and remained. Others returned to their aboriginal homeland to stay at the whim of the occupying settler or else lead a life as homeless boat people, sailing from place to place along the shores of Puget Sound [II-4]. You see, white settlers did not come into our territory peacefully. Our plankhouse or longhouse on Samish Island was torn down year after year while our people were away fishing in the San Juan Islands. The last time it was torn down, the whites used the planks to dike their fields [II-5]. So the Samish Island families moved in with the Samish on Guemes Island. We were forced off that land in 1907. Most of our people then moved across Guemes Channel to Ship Harbor [II-6], on Fidalgo Island, an old seasonal village site where the whites had recently build salmon canneries. Our people worked steadily in those canneries until they closed during the Great Depression, living in a regular village of a dozen or so houses at the north end of the cannery complex. Dr. Wayne V. Suttles, the eminent Coast Salish anthroprology scholar, is present today to respond to questions. Dr. Suttles' doctoral thesis included work with Samish elders of that time.

Our of our greatest sorrows is that our young people cannot bring their children to a longhouse on a particular piece of ground and say: "this is Samish, this belongs to our people." We stretch out our arms to embrace the San Juan Islands and the mainland and say: "This is all Samish--but we are landless." Our ancestors' love of their homeland, and the memory of their efforts to cling as long as possible to whatever small parcels of Samish territory they could, in the face of murders and arson by settlers, probably accounts for our persistence today in seeking justice and the fulfillment of our treaty. We want to acquire an adequate piece of land that we can call home, secured in trust in perpetuity. We collectively, the federal government and us as tribal leaders, owe this to future generations...a place we Samish can call home.

Our Congress has advocates of homeland for the Israelis, the Palestinians, and many other peoples but why does there seem to be almost a malevolent feeling toward the Samish Indians and other Native Americans and their request for a homeland?

III. OUR RELATIONSHIP TO OTHER NEIGHBORING TRIBES

The Samish Indian Nation as a whole has never affiliated or confederated with any other Indian tribe or community [III]. We remain sovereign and independent. A few Samish moved to the Swinomish reservation in the 1880s, a small and sometimes unwelcome minority. People of many tribes - Swinomish, Lower Skagit, Yakima, Colville, Warm Springs - live there today too under the Indian Reorganization Act. The residents only organized in 1936 as the Swinomish Tribal Community but nowadays they claim to be a "confederation of four tribes." We tell them they don't really know their own history. We do because we've always been a separate people with separate government.

We Samish had already formed a tribal council in 1926 [III-1], and met at a hall on the Swinomish Reservation or in Anacortes because we had no place of our own. When the Swinomish residents formed their I.R.A. government ten years later, non-resident Samish were not allowed to vote. Some of our Elders remember going to the reservation that day and being turned away. So we could not have voted to become a part of the Swinomish Tribal Community even if we had wanted to. The Indian Claims Commission understood this when it ruled that the Samish Indian Tribe rather than the I.R.A.-Swinomish Tribal Community, was the proper party to bring Samish aboriginal and treaty claims [Docket 261].

Of course, some of the individual Samish living on other reservations have worked for those communities and have even held elected office, but not as Samish. On those records they are Swinomish or Lummi. And there has been a lot of discrimination at Swinomish and Lummi against anyone openly identifying himself as Samish. When our Elders Alfred Edwards and Mary Ann Cladoosby died there, their families were denied equal funeral benefits given the other Indians on that reservation. Today we understand that persons of Samish descent on both the Swinomish and Lummi Reservations have been told not to be enrolled Samish if they want to stay there and fish. Mary Ann's designated heir, her late cousin and former Samish Chairman Rev. Thomas R. McDowell, was denied standing in her estate because he was a "non-federally recognized Samish". The opposing brief in the Interior Board of Indian Appeals was from George Dysart's Solicitor's office in Portland. U.S. v. Washington was again cited as the final word and it isn't.

Correcting any misunderstanding is important to us. When Judge Boldt signed Justice Department lawyers' papers that said we were no longer a recognized Indian tribe in 1975, we lost our reserved treaty fishing rights that we had been exercising continuously right up through the 1950s and 1960s. The Lummi Tribe, the Swinomish Tribal Community, and the Tulalip Tribes, Inc., took advantage of this to claim all our traditional fishing areas as their "U and A." They did this by giving historically inaccurate testimony and making unwarranted recommendations in their roles on the Indian Advisory Committee to Judge Boldt. The landless tribes were denied a voice. Our Samish family exclusive fishing sites were made "tribal" and divided up by people who disregarded historical continuity. Since we are supposedly no longer federally-recognized, we have no standing in court and have not been able to stop them. Right now, the Tulalip Tribes, Inc. are even trying to have one of our traditional family fishing sites on Lopez Island put in trust for them. They have usurped our rights. The Samish have been cheated and victimized. We, as Samish, can not even fish for subsistence, medicine, or ceremonial purposes. The fishing tribes would not give us fish for our October 10th ceremonial gathering. A kind hearted friend gave us 200 lbs of salmon. We have to dig clams under non-Indian limits. We aren't allowed to hunt ceremonial meat. Our very existence as Indians is threatened by these interventions.

We are bitter at this injustice, especially because many of these fishing people are not even Point Elliott Treaty descendants. For example, Lummi enrollment is based on a 1942 roll of reservation residents, and anyone listed on that roll, whatever their actual tribal ancestry, is regarded as Lummi. And since 1976, Lummi has fished our exclusive Samish territory. Yet the few Samish who live on the Lummi Reservation are now being threatened with the loss of their fishing cards which would mean losing their boats. We have not seen the Swinomish enrollment procedures, but we understand that through adoption and spousal rights Canadian Indians are fishing in the Point Elliott fishery. Tulalip Tribes Inc. is just a creation of the Indian Reorganization Act; any Indian who was living there in 1935 was enrolled as "Tulalip," but there was never such a tribe aboriginally as the Indian Claims Commission held in 1958 in Docket 262. We met with three Tulalip leaders [Stan Jones, Sr., Wayne Williams, and Frances Sheldon] May 5th to listen to their concerns about Samish re-recognition; every objection was based on economics, i.e. the Tulalips spent hundreds of thousands of dollars expanding their "U and A" from Tulalip Bay out into the San Juans (Samish fishing grounds) and their fishermen wouldn't want to share the resource revenue. Another said their funds might be reduced although 25 C.F.R. says new funds will be provided for newly recognized tribes. It appears to some of us that unless we are willing to become generic Indians, it will be harder for us to be Samish Indians.

IV. A CONTINUING FEDERAL RELATIONSHIP (1855-1975)

The Samish Indian Tribe has had consistent dealings with the federal government from the time of the Treaty through the 1970s [IV-1]. Even today we have business dealings with the Bureau of Indian Affairs, although not in relation to our treaty rights.

When one of the first white settlers on Samish Island, Dan Dingwall, started harassing "Old Harry" (Hulholttèn/Eat'h), the old man went by canoe to Olympia to see the Governor, who was also the Indian Agent for Washington Territory. The Governor gave him a piece of paper to show Dingwall, and Dingwall left the old man alone for a while. That was in the 1860s [IV-2]. About ten years later, a Samish man Bob Kithlanoch and Sam Watchoat [IV-6], a Clallam man married to a Samish woman, obtained Indian Homesteads (trust patents) on Guemes Island [IV-3]. A longhouse was built on that land, and it was home for nine Samish extended families related to one another by blood or marriage. In 1881, Tulalip Indian Agent John O'Keane conducted a "Census of Samish Indians on Guemes Island under the Tulalip Agency Jurisdiction" [IV-4]. Joseph and George M. Cagey and other Samish children left Guemes Island to attend the Tulalip Indian School.

Local newspaper articles from the next twenty years or so tell of spiritual and social gatherings in the Guemes Island village, attended by hundreds of Indians from all over Puget Sound [IV-5]. Indian Commissioner Cato Sell's 1913 [IV-6a] order placing landless Indians in five northwestern Washington counties under the jurisdiction of the Tulalip or Cushman Agency led to education and health benefits for some Samish. John and Donald McDowell left Blanchard to enroll at Carlisle Indian School in Pennsylvania to learn the printing trade.

By 1915, Samish leaders were working with the Northwest Federation of American Indians to bring about a settlement of treaty claims, and to call attention generally to the plight of the Northwest Indians, especially the landless tribes. The Bureau of Indian Affairs responded by sending Special Indian Agent Charles Roblin to prepare a list of unallotted or landless Indians in western Washington. So far as the Samish are concerned, the Roblin 1919 schedule was clearly incomplete and largely incorrect. While his notes and affidavits show that many of the Indians he interviewed self-identified as Samish, he routinely lumped them irresponsibly with other tribes. This was one of the FAP staff's major arguments that we had disappeared as a tribe by the 1920s. A disgruntled Mr. Roblin saw fit to divide Samish families and place them into unrelated and often hostile groups; maybe on his paper, we Samish did disappear.

By 1926, our Samish people adopted by-laws and elected tribal officers to represent them. The tribal council concerned itself with enrollment, advocacy of our right to public education and health services, defending Samish fishing rights and pursuing our treaty claims. We still have receipts on file from George Cagey for gas to transport Samish Indians to the Indian hospital at Tulalip. We were never just a claims organization; we always looked after our own the best we could manage. And the same family lines that supplied the leaders of the Guemes Island village--Edwards, Cagey/Charles, and (from Hulhollten) McDowells--supplied the officers of the 1933 tribal council and our present council [IV-8, 9, 10]. The Samish provided regional Indian leaders as well. When Senator Burton K. Wheeler (Mont.) and the Senate Committee on Indian Affairs held a hearing in Bellingham in 1933 to investigate the deplorable medical and housing conditions of Northwest Indians, Samish Don McDowell testified as the President of the Northwest Federation of American Indians.

In May 1934, the Samish tribal council sent a resolution in support of the proposed Indian Reorganization Act to Commissioner of Indian Affairs Collier. Later that year, Collier telegraphed the Indian Agency specifically to make sure whether the Samish had voted to accept the provisions of the Act. He was told that we had. But since we were landless, we were never given an opportunity to adopt an IRA tribal constitution. [NOTE: The then landless Nooksack Tribe could not organize but their vote has since been the basis of federal recognition when it was determined that a landbase is not necessary to be federally recognized.] We continued to govern ourselves under our 1926 by-laws.

World War II scattered the Samish and other Indians regardless of where they lived. The near total manpower mobilization took men and women into the armed services and defense plants - even mothers from their homes. Each of our major family lines suffered deaths of long-time leaders during the 1940s and when we got home again from war, there was a new generation of leaders representing families. In 1951 we adopted an updated and revised constitution and by-laws.

We also re-filed our treaty claims with the Indian Claims Commission, which eventually held that the contemporary Samish Indian Tribe is "an identifiable tribe of American Indians" and the successor in interest to the Samish who signed the Treaty in 1855. Offsets for services reduced our judgement award from the absurd figure of $17,000. for all our ceded land to only $5,542. And even this has not been distributed. [V-11] How can the government pretend today that we weren't a recognized Indian tribe, after it got away with deducting all those expenses from our claim for giving us Indian services? Or when the BIA insisted on reviewing, approving, and auditing all of our attorney contracts in our claims case?

Throughout the 1950s and 1960s, our tribal government dealt with federal agencies in improving health care, education, and employment opportunities for our tribal members. Samish were certified as eligible for services by the Indian Health Service in 1972 [IV-11]. Our tribal leaders were frequently invited to government workshops and seminars on Indian economic development and social services. We also worked hard at defending our fishing rights--many of our people were arrested for fishing or gathering clams. In 1953, our members were issued "blue cards" by the BIA, identifying them as "Samish " Indians, with the right to hunt and fish under the Point Elliott Treaty [IV-12].

Our tribal officers were very active in the Inter-Tribal Council of Western Washington Indians, which organized the fight against the closure of Cushman Indian Hospital [Tacoma], and against the proposed HJR 108 termination of Washington State Indian Tribes. We were one of the tribes listed in the draft termination legislation HJR 108 in 1953, by the way. If we were not still recognized, why did they want to terminate us?

In the 1960s and 1970s, the Samish tribal council was working closely with the BIA's Western Washington Agency on a revised tribal constitution, updating our enrollment, and investigating the possibility of re-acquiring land. The Agency and Portland Area Office reviewed our draft I.R.A. constitution and advised us to delete a blood quantum requirement for enrollment. After we followed that advice, they recommended approval of our draft I.R.A. constitution in 1974. Our tribal council was caught in the middle of a major BIA change of policy toward non-recognized tribes but they didn't tell us. Our council accepted this constitution and proceeded to do business under its provisions. They knew the Secretary had not called an election to approve it and that the roll referred to had not been prepared by the Secretary, but they trusted the Secretary of Interior and the Bureau of Indian Affairs IV-14, 15]. That Council should have realized mischief was afoot when three Samish contested the validity of the 1975 election held under those circumstances and the Agency replied to the dissenters that the Bureau could not intercede because Samish were not recognized - never mind that the BIA had worked so closely to develop a Samish tribal governing document with no quantum, no Roll and no Secretarially called election. When just recently learning of the policy changes, we ponder whether the "no quantum" was a deliberate act to sabotage the Samish. Regardless, that 1975 Constitution was revised and adopted with changes in 1983 with all reference to the IRA and the Secretary removed. With recognition so close in 1987, we began rewriting governing documents including ordinances on enrollment, jurisdiction, fisheries, law enforcement, social services and education, and have committees working on the transition.

V. WRONGFUL DENIAL OF OUR RIGHTS (1975 - Present)

While our draft constitution was still under BIA review, first along with 14 other tribes, we tried to intervene in the new Indian fishing-rights case, U.S. v. Washington, then later along with four other landless treaty tribes. Our Chairman Margaret Greene delivered our paperwork personally to Judge Boldt (together with the Stillaguamish). We thought we were in round one. To our amazement, Regional Solicitor George Dysart, who was representing the United States in that case, told the court that we were "not currently recognized as Indian tribes." Based on this, the court denied our motion to intervene. We lost our fishery, and our family fishing grounds were divided up among the reservation groups. We tried to get the Secretary of the Interior to correct this error administratively, but we were told year after year that he could take no action until the BIA came up with regulations to deal with cases such as ours.

Those regulations were finally published in 1978, and we filed a "PETITION FOR FEDERAL ACKNOWLEDGMENT." At first the BIA didn't even want to consider our petition because of the court decision that we couldn't fish. But the Justice Department had already told the court that the question of our fishing rights could be reopened, if we petitioned for acknowledgment and got our recognition back. So we were forced to petition and the BIA had to review our petition.

In 1982, the BIA's "FAP" staff recommended that Samish be turned down. They ignored our Treaty, our history of federal dealings, everything we had been doing as a tribe to look after our people all those years. Their decision was based on a few days of field work, maybe ten or twelve interviews, which they said showed that we no longer share a common Samish Indian identity. We tried to get copies of the BIA researchers' field interview notes so that we could respond--it took four years of administrative appeals to get heavily-edited copies of some of those notes, and we still don't have all of them, just enough to know that they don't back up what the FAP staff said about us. We hired our own anthropologist, submitted the results of her work and two volumes of additional historical documents to the BIA in 1986, and got turned down again. Our new evidence was not considered any more than our original was. Truthfully, it appears to us that the negative decision may have been made when John A. Shaphard wrote .."On behalf of the Federal Acknowledgment Project staff, I want to thank you for a most pleasant visit to the Tulalip Reservation. Our discussions with you and Mr. Gobin was informative and useful in that it clarified the tribe's position and our posture relatives to acknowledgment." This March 21, 1976 letter was addressed to the Tulalip Tribes Inc.'s attorney Lewis Bell. It appears to us in reading the internal FOIA'd memos from the Gay, White and Shaphard BIA files, the influence of Mr. Bell is apparent.

We think the BIA's treatment of our case was dead wrong. We already have a treaty, and we were treated as Samish Indians by the BIA for 120 years after that Treaty was signed. We supported the Indian Reorganization Act, fought the State over fishing, and beat termination working side-by-side with the other Indians of Washington State. The only thing we don't have is a reservation, and that's because the United States did not carry out its treaty promise to set one aside for us.

We don't understand how we got lost in 1975. We don't accept it. We don't accept that the FAP staff or the Secretary of the Interior can break an Indian treaty by saying, "these people don't look enough like Indians to us any more." Our Treaty was a solemn contract between two nations, for themselves and their children, forever . . . for as long as you people continue to live on the beautiful land we had to give up, and for as long as the Samish still go on living and passing their Samish names to our children and grandchildren.

The second option would be a Court appeal costing thousands and thousands of dollars we don't have. The physical and emotional drain on our elders and leaders having to prove over and over again that the Samish are here today, have been since treaty time and were before treaty time is cruel and inhuman treatment. Why should Samish not have the legal standing before the law in this great nation? We have not had due process under your constitutional government. No person should be allowed to take away another person's dignity. We appeal to you to restore our status as treaty Indians immediately. Thank you.

WRITTEN TESTIMONY OF JOHN M. KIDDER
FINANCIAL SECRETARY OF THE SNOHOMISH TRIBE OF INDIANS
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
MAY 26, 1988

I am John M. Kidder or Wha Da Pa, a Snohomish Indian of the Snohomish Tribe of Indians, speaking for my people today. We thank the honorable members of the Senate Select Committee on Indian Affairs for giving us this opportunity to explain our plight as an Indian tribe which, although recognized by treaty, is no longer acknowledged to be an Indian tribe by the Secretary of the Interior.

I. THE SNOHOMISH TREATY SIGNERS AND THEIR DESCENDANTS

The Snohomish nation was a signatory to the Treaty of Point Elliott [1]. Nine of the Indians who signed that Treaty in 1855 were Snohomish. I am related to six of them.

Those who signed the Treaty on behalf of the sovereign and independent Snohomish nation were: S'Hoolst-hoot, Snah-talc (Bonaparte, the head chief), He-uch-ka-nam (George Bonaparte), Tse-nah-talc (Joseph Bonaparte), Ns'Ski-oos (Jackson), Wats-ka-lah-tchie (John Hobst-hoot), S'Sleht-soolt (Peter), Sah-an-hu (Hallam), and Sa-gul-lalh (John Taylor, interpreter).

Ns'Ski-oos, Sah-an-hu and John Taylor came from a Snohomish village far up the Snohomish River, near the present-day City of Monroe; the rest of the Treaty signers were from the village at Cultus Bay on Whidbey Island. They were all close relatives, however. S'Hoolst-hoot, Bonaparte and Peter were brothers. S'Hoolst-hoot was the father of Wats-ka-lah-tchie. Bonaparte was the father of George and Joseph Bonaparte [1-a]. Their closely-related families continue to make up a large part of the

Snohomish tribe of Indians: 145 contemporary Snohomish are direct or collateral descendants of Snohomish Treaty signers [2].

We are the successors in interest to Treaty-signing Snohomish in social, cultural and political terms as well. For example, most of the current members of our Tribal Council trace their ancestry to Treaaty signers. Chairman Robert Woodley, John Worthington, William Young, James Woodley, Salima Worthington and Sharon Early are all from the Hicks-BOEDA [Strand] family line. Kathleen Taylor and myself are descendants of Bonaparte. Merle Bishop Richardson, who resigned in March due to illness, is a descendant of S'Hoolst-hoot. Evelyn Elwell Knapp and Sharon Elwell Dollar are descendants of Gu Gui Kecti-Dos, and Virginia Ryan a descendant of Willow Point Tom [3].

Included with my written testimony is a chart with map which traces Snohomish leadership patterns and sites since the Treaty was signed [3-a, 3-b-1,2]. You see that the same families have been involved continuously in tribal affairs, to a greater or smaller extent, since those days. Snohomish leadership is not a matter of happenstance. It is a carefully preserved tradition, just as the integrity of Snohomish lineages is preserved by our enrollment process, which has been formalized since the 1920s [3-b, 9, 10].

II. THE SNOHOMISH RESERVATION

The Snohomish reservation listed in Article II of the Treaty of Point Elliott was to be:

> "the amount of two sections of land or 1280 acres on the north of Snohomish Bay and the creeks emptying into the same called Kwilt-seh-da" [1]

This was recognized by Special Indian Agent M. T. Simmons, who was assigned to lay out the lands promised by the Treaty, when he decided not to survey the Snohomish Bay reservation, but instead to concentrate as many Indians as possible on the nearby "general" reservation referred to in Article III. He wrote on July 1, 1860:

> The reservation next mentioned in this treaty is on the North side of Snohomish Bay and is designated for the use of the Snohomish, Snoqualmie, and other tribes belonging to those rivers and their tributaries. This is so near the general reservation that it appears to me at this time, unless the Indians particularly desire and insist upon it, it would be better not to incur any expense but to settle them upon the General Reservation at once and let the money that would be spent on temporary improvements be put into permanent ones [4].

The four-year delay in ratification of the Treaty by Congress created circumstances not anticipated at Treaty time. Indian leadership had many changes. Several key signers died within those four years [5, 5a, 5b], and, until his death in 1882, many Indians accused interpretor John Taylor to lying to them. 71 years after the treaty the question of Taylor's helping his fellow Indian understand the treaty was debated in depositions prepared for D'wamish etal. The other three "temporary" reservations that were specified by the Treaty--Port Madison (Suquamish), Perry's Island (Swinomish) and Cho-cho-sen (Lummi)--were all developed as promised. However Governor Stevens' plan for eventually concentrating all Indians west of the Cascades on a single reservation never came about [1].

As a result of Simmons' action, the Snohomish and Snoqualmie were forced to compete with thousands of Indians from all of the other Point Elliott Treaty tribes for the few allotments that were available on the general (or Tulalip) reservation, which was not particularly suited for farming to begin with. According to the Indian Agents' reports, only a small fraction of the Snohomish were able to find homes at Tulalip, and many who moved there at first had to leave in frustration by the 1880s [5-c]. Most Snohomish remained in the vicinity of their pre-Treaty villages at Snohomish, Cultus Bay, or on Chimacum Creek [5-d].

Snohomish Treaty signers **Bonaparte, Hallam,** and the son of Treaty **Signer Peter,** complained to the Chairman of the Board of Indian Commissions in 1871 [6] that they had nearly despaired of fulfillment of the Treaty. Although some Snohomish were able to obtain trust allotments on the public domain (Indian homesteads) in the 1880s [6a], the Treaty promise was never fulfilled, and all the land at Tulalip had been allotted by 1909 [17].

In this respect, Snohomish history has a parallel among the Clallams, who were not provided the separate reservation they expected, refused to move in with the Skokomish tribe, and so remained, without legal protection from the United States, in the neighborhood of their old villages. The Bureau of Indian Affairs finally bought land for the Clallam in the 1930s, but only got as far as talking about it with us [7].

III. THE SNOHOMISH TRIBE AND "TULALIP TRIBES, INC."

The **Northwestern Federation** of American Indians was founded on February 22, 1913 [8] by Thomas Bishop, a Snohomish Indian. Bishop and the Federation fought for the treaty rights of landless Indians in the Northwest for twenty years. It was a broad-based organization with chapters at Monroe, Jamestown, Anacortes, Port Madison and Lummi. Stimulated by the Federation, many of the reservation and non-reservation tribes began formalizing their own political systems in the late 1910s and 1920s. The Agency had denied approval to tribal organizations seen as a threat to the control by the Agent.

The Snohomish Tribe of Indians organized formally in 1917 [9, 10] and incorporated in 1926. We have enrollment records from 1927 [10-a,10-b], showing that most of our members from that time lived in the vicinity of our traditional villages along the Snohomish River, where several of them had Indian homesteads, on south Whidbey Island, and along Chimacum Creek. Just a few of them were living on the Tulalip Reservation--that is, the old general reservation--along with Indians from many other tribes.

The various Indians living on the Tulalip Reservation later organized separately under the Indian Reorganization Act. Their constitution was approved in 1935, and their corporate charter in 1936 [11-a, b, c]. Not more than one-fifth of the members of the Snohomish Tribe were living at Tulalip at the time, but they were the only ones allowed to vote. Eligibility lists were prepared by the Bureau based on census rolls and discretionary judgment of which individuals, if no longer actually living on the reservation, were still keeping some sort of relationship with the place [12, 13, 16-a, b]. So while most Snohomish were left out, a Paiute Indian voted [14] because he happened to be living there!

Robert Shelton, Secretary of the Snohomish Tribe of Indians (living in Minneapolis, Minn.) but writing from Washington, D.C. to the Commissioner of Indian Affairs tells of the allotment failure, lack of services for non-reservation Snohomish and other Indians [15]. Minutes of a residents' meeting on the Tulalip show that he warned them not to dispose of any property without the consent of all the Snohomish people, since the Reservation was all that was left, under the Treaty, of aboriginal Snohomish territory [15a]. The Solicitor's Office also advised the Reservation leadership in 1935 that they should not pretend in the wording of their constitution to be an aboriginal tribe, but should make it clear they were a geographical Indian community recognized by the United States "for the purpose of reorganization" only [16]. The Tulalip constitution extended membership to all Indians on the Reservation, regardless of their tribal ancestry.

Let it be clear that there never was a Tulalip tribe, just an organization of Indians who were living on the "general" or Tulalip Reservation. Tulalip Agency Superintendent Buchanan said it in his 1914 annual report [17]:

> "A Tulalip Indian is not an Indian of the Tulalip Tribe for there is no such tribe; he is merely an Indian who lives or belongs at Tulalip."

Tulalip Agency Superintendent Raymond Bitney said it again clearly in a November 28, 1953 letter to the Commissioner on Indian Affairs:

> The Tulalip Tribes, Inc. is a community group organized under the Indian Reorganization Act and is supposed to be composed of the people with Indian blood who reside on the Tulalip Reservation. There is no Tulalip Tribe and never has been, so that the group has no treaty rights, no aboriginal rights or authority to take over properties or authorities created under the Point Elliott Treaty of 1855 [17-a].

The Justice Department took exactly the same position when the Tulalip Tribes, Inc. filed with the Indian Claims Commission in 1951, and the Commission agreed when it dismissed their suit (Docket 262) in 1958 [18]. The contemporary Tulalip Tribes Inc. is a business corporation that erroneously describes itself on its letterhead [18-a] as the "successor-in-interest to all Point Elliott Treaty tribes."

IV. CONTINUED RECOGNITION

On the contrary, the Snohomish Tribe of Indians and Bureau of Indian Affairs continued to deal with each other on a wide range of matters after

1935 [19-a-g]. At least through the 1950s, Indian probates continued for Snohomish families, trust land lease payments were distributed to our members, and we were issued BIA identification cards as "Snohomish Indians, for the exercise of our Treaty-reserved hunting and fishing rights. Snohomish children attended Indian boarding schools at Tulalip, Chemawa, and Carlisle. Snohomish Indians received medical treatment at the Indian clinic at Tulalip, and later, the Cushman Indian Hospital (Tacoma). Councilman Al Cooper's grandfather died at Cushman. When Irvine Matheson was at Cushman, he was mistakenly identified as Clallam, but Superintendent Upchurch had them change his records to read "Snohomish." Upchurch wrote Margaret Bugher a letter clearly identifying her as "Snohomish" rather than "Tulalip." Another Snohomish, Tommy Yarr, went from Haskell to Notre Dame, where his football record earned him a place in the American Indian Hall of Fame.

Just to avoid any confusion, it should be kept in mind that the Indian Agency for the whole region [1 (Art.III)], including the Swinomish and Lummi Reservations as well as several landless tribes, was located at Tulalip up through the 1940s, after which it was moved to Everett and renamed the Western Washington Agency. The fact that many Snohomish were going to Tulalip for Indian services did not mean they were being served as Tulalips, it was simply that the Indian Service school, hospital, and offices were all there.

World War II sent Snohomish men and women all over the world in the armed services, or into defense industries. While most of them returned to the general area of our traditional homeland, some remained where they had married or found permanent employment. After the War it took us a few years to gear up--with some of the old leaders but more often the new generation of family leaders was evident. [20]

In 1953, the Eisenhower Administration proposed the termination of federal relationships with all the Indian tribes in Washington State (HJR108)[21]. The draft legislation listed the Snohomish, separately from the "Tulalip Tribes, Inc.," as one of the tribes to be terminated. We joined in the fight against termination led by the Inter-Tribal Council of Western Washington Indians, and the bill was stopped [21-a,b]. About that time, we were issued identification as Treaty Indians entitled to fish without State licenses. I personally still have a number of cards issued by both the federal and State governments , identifying me as a Snohomish Indian, a Point Elliott Treaty Indian, or as Indian [19-c].

In 1951, the Snohomish Tribe of Indians filed suit against the United States under the Indian Claims Commission Act--a suit that resulted in a judgment in our favor. Congress appropriated funds to pay us in 1971. The Western Washington Agency followed every detail of our claim, including approval of the attornies' contractss and billings. It took over a decade to distribute the award under a Roll prepared by the BIA in consultation with our tribal council [22-a, b, c].

It is highly significant that a parallel suit brought by the Tulalip Tribes Inc. was dismissed [18]. In its motion to dismiss the Tulalip claim, the Justice Department argued that the Tulalip Tribes did not exist in 1855 when the Treaty was signed, and that the Snohomish and other Treaty tribes were still organized and able to press their claims for themselves.

V. U.S. v. WASHINGTON AND AFTER

In the wake of Judge Boldt's first decision upholding Indian treaty fishing rights in 1974, we were working with the Western Washington Agency in preparing a new tribal constitution and by-laws for approval by the Secretary of the Interior [23]. We were told this was all we needed to do to come in under the court's ruling, and if there was any question about our being a recognized tribe, the Interior Department was going to go ahead and recognize us administratively [23-a - g]. We have a copy of a letter which was drafted for the Secretary's signature in 1974, acknowledging that we are a recognized Indian tribe based on our Treaty and our continuous dealings with the Bureau of Indian Affairs [24, 24-a]. It says that, based on staff research by the Bureau, we meet all of the traditional legal criteria for federal recognition. That letter was never sent.

Using the traditional Indian value system, we like to think there is honorable intent in all governments. But the letter dated March 21, 1976 from John A. Shaphard, Acknowledgement Project Leader, to Mr. Lewis Bell, attorney for the Tulalip Tribes Inc., has caused us to ponder a good bit. Mr. Shaphard expresses appreciation from all the project staff for the hospitality shown at Tulalip and for the information which would establish the project "posture" in the process. Are the most dreadful of our thoughts possible? It has the appearance to our uneducated leaders that Mr. Shaphard might have determined that day, under the tutelage of Mr. Bell, that no Puget Sound tribes would be recognized under a new process. We have often wondered what happened to the words "treaty relations are prima facie evidence" of recognition of a treaty tribe. We know it was there in the Task Force 10, A.I.P.R.C. report but it disappeared in the 25 C.F.R. Part 54 criteria. Where and why? we have asked so many times as we have tried to cope with a Catch 22 process that we do not belong in. We are a treaty tribe. The memos between Les Gay and Ted White and Bud Shaphard's memo to the files do have the appearance of policy change being made within the heart of the department. It even has the appearance of Morris Thompson not knowing. "Some one is going to have to bite the bullet." [24-b, c] Was it bit or used on the Samish and Snohomish in the new 1978 criteria?

Instead of protecting us as a Treaty tribe, the Justice Department went to the court in U.S. v. Washington and argued that we were not recognized and should not be allowed to exercise the reserved Treaty fishing rights we already had enjoyed for 120 years. The court agreed, and it was upheld on appeal, but only after government lawyers conceded that we had the right to go back to the Interior Department for clarification of our status [25]. And that is what we did, by filing a petition for federal acknowledgment under the new regulations adopted in 1978 [26].

Little did we know, when we filed that petition, that the Bureau's "FAP" staff would completely ignore our Treaty history, and our long and continuous history of dealings with the Bureau itself. They dismissed everything the Bureau had done for us or told us since the Treaty as "confusion" or "error," rather than evidence of recognition. [27] They said we weren't "tribal" any more because we have a council form of government with written records. Then they argued that we had completely disappeared as a distinct people by the 1880s, for which they simply referred to old "U.S. census reports" and their own two weeks of fieldwork. We demanded copies of their field notes, just like the Samish, and won an administrative appeal order that they be released two years ago, but we still haven't seen them.

The Bureau has only made a "proposed" finding against us thus far, so in principle we have a chance to respond with further evidence and try to change their minds. We've done the research and written our response, but we have absolutely no faith whatsoever in the process, which has already held us up for nearly ten years. As far as we're concerned, the real issue, and the only legitimate issue, is whether Congress has ever expressly terminated the United States' treaty relationship with us.

We know who we are, who our families are, and where we come from, and the Bureau itself knew exactly who we were until 1974. The FAP staff cannot convince us that we lost our Treaty rights because we are not exactly the same as our ancestors who signed the Treaty. You gentlemen are not exactly like your ancestors either, but we do not say, "well, they've changed, so let's take our land back." A contract is a contract. My ancestor Bonaparte waited all his life to see that Treaty honored, and we are still waiting.

SNOQUALMIE TRIBE
18525 Novelty Hill Road
Redmond, Washington 98052

HEARING TESTIMONY

I have worked on behalf of, not only my people, but all Indian people for twenty-five years, and to date, I still fight for the same issue that I started with some twenty-five years ago. I refer to the long, old problem of an attempt by the federal government to simply terminate, by an in-house decision of the U.S. Department of Interior.

I watch my elders sit in their meager homes and wonder what awful thing they have done to the "D.C. people" to make them want our people to suffer the embarassment by their brothers of the recognized tribes.

I would like to tell you about a man that died at the age of 107, Mr. Ed Davis. He sat in his home, crying, shortly before he died, thinking that, in some way, he had failed his people--the Snoqualmie people. He said, "I cannot read what is on these papers that I get from the D.C. people. What else do they want from us? They have taken our land, our fish, our right to be called an Indian. They promised us forty acres of land and a 'bucket of gold' if we would not make war any more. I have waited for a hundred years and have gotten nothing. We ask them to call us Indian, and they tell us that we are not Indian amymore. How did they take my Indian blood away from me? I do not understand."

It is for these people and their grandchildren that I sit here today.

It is said that if our people get a clarification on their status as an Indian tribe, and that status is deemed to be recognition, that it will cost the U.S. a considerable amount of money. That is simply not the case. In most cases, the 7 tribes are already receiving services in one form or another.

Earlier, I talked about our elder, Mr. Ed Davis. I would like to show this picture of Mr. Davis, and some of the other elders, that fought so very long for the right to be called an Indian elder from the Snoqualmie Tribe.

Apart from the elders of the tribe, we have our children, who have been raised as Snoqualmie Indian children, only to be told, "you can't be Indian because you are not in this book that lists all the tribes from the U.S." On the playground, children won't play with them because they are "dirty Indians" that not even the recognized tribes want.

In late 1956, my great grandfather was placed in a nursing home in Redmond, Washington, by a non-Indian person because he just knew that he was being neglected by his people. What the non-Indian did not understand, was that as the Chief of the Snoqualmie Tribe, and as most Indian people do, they choose to die at home with their spirits and their beliefs. After we found that he had been placed in a nursing home, my aunt and I went to see him. When I went into his room, I found him sitting in this sterile bed, rocking back and forth, crying and wondering what he had done to deserve this kind of treatment by the non-Indian people. When I looked at his food tray, I found a bowl of hot mush and toast. While I agree that there is nothing wrong with that, in itself, it should be noted that Indian people that know that they are passing, (and they all do), eat foods that they believe will protect their souls through the travel from one world to another. Grandpa begged us to take him home, but we were told that because we had not admitted him, we could not take him back home to die. Grandpa spoke very little English, and could not communicate to the staff, that not only did he want to go home, but because of his beliefs, he had to go home. I believe that had he been left with the ways of our people, he would have lived a great deal longer than he did. Case in point, when Ed Davis was 95 years old, the doctors said to take him home and enjoy him as long as we could, because he would not be around more than a month or so. Well, Mr. Davis died May 20th, 1987 at the age of 107. I tell you this because it is important for you to understand the need for our people to stand as an equal to their brothers of the "recognized tribes."

A BRIEF LOOK AT THE STEILACOOM TRIBE OF INDIANS

Nile Robert Thompson, Ph.D.
University of Washington

I. PRECONTACT SETTING

Before White contact the Steilacoom Tribe was an independant group inhabiting the Tacoma Basin in what is now western Washington State. Approximately 600 Steilacoom Indians lived in five bands within the drainage basin.

II. MODERN COMMUNITY PROFILE

a. Community Statistics

Today the Steilacoom Tribe has a membership of 617 Native Americans. Approximately 94.1% of the tribe descend from the membership of the Steilacoom Tribe at the time of treaty signing. Remaining members almost entirely descend from other Washington State treaty tribes.

A substantial number of the tribe's members live in and near their traditional homeland. About 47% of the tribe, in 139 households, live within Pierce County while many others reside in neighboring counties. This proximity allows the group to meet, associate and conduct tribal business. The residential pattern of the tribe is much the same as it was before white contact. Steilacoom people continue to live in small family pockets and share a common set of values and goals that were well established by the time of the treaty signing.

b. Tribal Council

The tribal office is located at 19614 Mountain Highway, Spanaway, WA. The Steilacoom Tribe has been governed by a

Constitution and By-Laws since the 1930s when it received Bureau of Indian Affairs assistance in creating its original document.

The Tribal Council, the governing body of the tribe, is composed of 9 members elected every 3 years by the membership of the tribe. Representation on the council is generally divided along the lines of family, residence location and age. General Membership meetings are held semi-annually while Tribal Council meetings are held monthly. The Tribal Council has 4 officer positions: chairperson, vice-chairperson, treasurer and secretary.

c. Tribal Goals

The following goals of the Steilacoom Tribe have been established at General Membership meetings:

1. Care and comfort for tribal elders.
2. Reestablishment of a centralized community.
3. Reestablishment of fishing and hunting rights guaranteed by treaty,
4. Establishment of a tribal cultural center, and
5. Preservation of cultural and natural resources within traditional Steilacoom territory.

d. Tribal Activities

The tribe operates a tribal enterprise called the Mountain Highway Boutique, a retail store located at the same site as the tribal office. Profits go to help maintain tribal operations and the special services developed for the social and economic well being of its people. At present the services are:

Elders Program	Employment Services
Food Bank	Cultural Activities
Youth Employment Program	Sales Training Program

Holiday Food Distribution

In April 1987 the tribe was awarded a grant by the Administration for Native Americans to establish a tribal museum and conduct related business activities. The Steilacoom Cultural Center opened in April 1988 in the town of Steilacoom. A Centennial grant from the State of Washington will help fund an exhibit on the tribe's prehistory.

e. Tribal Representation

The Steilacoom Tribe is currently a member of and/or is represented on a number of associations, boards and committees, including the following:

National Congress of American Indians
Small Tribes Organization of Western Washington
Affiliated Tribes of Northwest Indians
Pierce County's Shoreline Management Committee
Town of Steilacoom's Centennial Committee
State of Washington's Native American Centennial Committee
National Indian Education Association
Western Washington Indian Employment and Training Program
Tribal Museums Association of Washington
Heritage League of Pierce County
Burke Museums' Centennial Exhibit Native American Advisory Committee

In the recent past the tribe was also represented on the following, among others:

National Advisory Council on Indian Education

Western Washington Indian Education Consortium

Tacoma Adult Indian Education Board

E.S.D. 121 Title IV Indian Education Parent Committee

Washington State Indian Education Assocation

Washington State's Advisory Committee on Voluntary Service

Pierce County Health Education Coalition

Coalition of Indian Controlled School Boards

f. Recent Negotiations

Recently the Steilacoom Tribe has been involved in a number of political activities, including the following:

Negotiations with Pierce County over 1) cultural resource management, 2) subsistance hunting and 3) land use at Fort Steilacoom County Park;

Negotiations with University of Puget Sound over the return of burial remains;

Negotiations with the Town of Steilacoom over zoning restrictions regarding the Steilacoom Cultural Center;

Negotations with the Administration for Native Americans over funding for the Steilacoom Cultural Center;

Meetings with Western Washington State Hospital concerning the establishment of a series of tribal nature and history trails on their grounds;

Meetings with the Bureau of Indian Affairs over the tribe's rejection of an Indian Claims Commission settlement, and Federal Acknowledgment; and

Negotiations with Pierce County, the Puyallup Tribe and the Town of Steilacoom concerning Indian employment and training funds.

III. The Relationship with the Federal Goverment Since Treaty Signing

a. 1854 to 1870

The Steilacoom Tribe is listed as the third tribe entering into the Medicine Creek Treaty with the United States in late 1854. The treaty is ratified by the U.S. Senate on March 3, 1855 and signed by President Pierce.

Although the Steilacoom signs the treaty, they are not given a reservation because their territory contains the population and economic center for Europeans and Americans alike. The leading Steilacoom headman, Sam Young, makes a compassionate speech in 1857 on the Steilacoom Reserve, established for the Steilacoom Tribe and others during the Territorial War. His plea fails to convince Governor Stevens to create a seperate reservation for the Steilacoom tribe. As a consequence, Young and a sizable number of other Steilacoom do not move to reservations but instead remain in their traditional territory and maintain the integrity of the tribe.

b. 1870 to 1900

During this period, the U.S. Census for Pierce County identifies the Byrd, Andrews and Sears families of the Steilacoom Tribe, as Indians.

Indian Agent Milroy conducts a survey of southern Puget Sound Indians residing off-reservation in 1878. He finds two functioning, off-reservation, socio-political entities in Pierce County, the Gig Harbor Tribe and the Steilacoom Tribe, recording Sam Young and other prominant Steilacoom leaders.

In 1879 Steilacoom tribal member Frank Latour selects an allotment on the Puyallup Reservation. He is never to gain the land, however, since he apparently rejects signing an oath that he has become a member of the Puyallup Tribe.

A number of Steilacoom children attend federal Indian schools in Salem, OR, on the Skokomish Reservation and in Tacoma, WA from 1880 to 1900.

c. 1900 to 1940

Steilacoom children attend federal Indian schools in Salem, OR and Tacoma, WA from 1900 until the 1930s. A number of Steilacoom tribal members receive treatment at Cushman Indian Hospital from 1927-37.

The continued lack of BIA support forces the Steilacoom and many other on and off reservation tribes in Washington to develop a Euro-American style political structure in order to deal with issues. The agencies at Tahola and Tulalip were aware of the Steilacoom in the 1920s and aware of its problems. In 1925 one superintendant states that he is "in charge of the Steilacoom Tribe of Indians who are non-reservation Indians" and that tribal business is conducted by means of a "general council meeting."

Bureau representatives and the Puyallup Enrollment Committee, in 1929, state that the Steilacoom Tribe and the Puyallup Tribe are "distinct tribes" and that any Steilacoom wishing to join the Puyallup Tribe will have to first relinquish his membership in the Steilacoom Tribe.

Throughout the 1930s the Bureau continues to identify the Steilacoom as a "group of Indians" or "a group of puoblic domain Indians" centered in southern Pierce County. In 1931

Assist. Commissioner Scattergood states that the Steilacoom Tribe was under the jurisdiction of the Taholah Agency.

In the Court of Claims case, the federal government treats the Steilacoom Tribe the same as it does the other recognized tribes in the area, negotiating and approving legal contracts for the tribe in accordance with Section 2103 of the United States Revised Statutes which requires federal approval for legal contracts with Indian tribes.

Officials of the Tahola Agency work toward combining the Steilacoom and Nisqually tribes in the mid-1930s. The landless Steilacoom and reservation Nisqually tribes meet in 1936 under Bureau observation concerning participation in the Indian Reorganization Act. After rejection by the Nisqually of attempts to consolidate the two tribes, "based on personal feeling more than anything else [because] the Nisquallys feel that owing to being more intelligent these Steilacoom Indians would eventually take over all offices and dominate over the Nisquallys," the Bureau (up to the Commissioner himself) considers a plan to transfer "these Steilacoom Indians to the Ozette Reservation."

d. 1940 to 1970

From 1940 through the 1960s the Western Washington Agency assists the Steilacoom Tribe in administrative matters. During the 3 decades, Supt. Ringey and other officials attend tribal meetings, assisted the tribe in preparing a new constitution and a list of members, and advise them on hunting and fishing problems. The agency continues to list the Steilacoom Tribe and its officers in its "tribal directory".

The Bureau also oversees contracts between the tribe and attorneys working on the Indian Claims Commission case. In 1961 the Steilacoom chairperson, by invitation as the head of a "Tribal Governing Bod[y]," meets with Secretary Udall and his Task Force in Indian Affairs in Spokane.

Tribal members continue to be serviced at Cushman Indian Hospital from 1940 to 1954. During 1952-53, the BIA issues Blue Cards to the members of the Steilacoom Tribe that, because they are "a recognized member of an Indian tribe," allows them to hunt deer or larger game without State of Washington tags and to fish without obtaining a commercial license. In 1953 the Bureau investigates a bill draft proposing the termination of federal supervision over numberous Indian tribes in Washington State, including the Steilacoom Tribe.

In a "Memorandum Opinion" issued in 1955, an Attorney for Indian Affairs finds that "the Steilacoom Tribe has rights within the reservations established by the treaty" and that the tribe has "complete authority to determine all questions of its own membership". On September 21, 1962 the Indian Claims Commission finds the Steilacoom Tribe of Indians to be "an identifiable group of American Indians" that possesses "the authority to represent the tribe" in the case.

From 1967-71 the Bureau continues to identify the Steilacoom Tribe as being composed of "Indian people". The Western Washington Agency treats the Steilacoom Tribe as an Indian Tribe that was "not organized under a formal document". Agency officials attend tribal meetings, keep the tribe appraised of Indian off-reservation fishing regulations and the availability of eagle feathers to them as "Indian people", and oversee attorney contracts with the tribe.

e. 1970 to Present

A number of government agencies recognize the tribe from the mid 1970s to the present, and some of them provide services to the tribe. For example:

1974 A representative of the US Fish & Wildlife Service meets with a tribal representative to discuss the tribe's fishing regulations within the larger context of Indian fisheries and conservation.

The Department of the Army recognizes the tribe's treaty status and the status of current members as Indians in granting tribal members permission to hunt on lands within Fort Lewis without a hunting license.

1976-77 The tribe administers a Pacific Northwest Regional Commission program --- this is a commission set up with the States of Washington, Oregon and Idaho to grant and oversee the use of federal funds.

The American Indian Policy Review Committee recognizes the tribe as a currently functioning Indian organization.

1979 The Smithsonian Institution places a tribal member in its Native American Tribal Training Program.

1973- A number of members receive health treatment from the Indian Health Service.

1980 Funds are supplied to the tribe by VISTA for a program that includes the compilation of family ancestry charts.

President Carter appoints a tribal member to serve on the National Advisory Council on Indian Education.

1981 The Department of Energy awards a grant to the tribe, in association with STOWW, for a project on Indian technology.

1982- The tribe receives funding from the Administration for Native Americans for a variety of projects

Now The BIA manages an Indian Land Claims settlement fund for the tribe in the manner prescribed by law for Indian tribes and children participate in Title IV programs in public schools.

IV. Continuity of Steilacoom Leadership Since the Treaty

The Steilacoom Tribe has effectively used a number of traditional Salishan strategies to struggle against the multitude of obstacles they have encountered. Its efforts have produced an unbroken line of leadership and demonstrate one use of political authority.

Sam Young was selected by the members of the tribe in 1857 to represent them at the Fox Island Council negotiations with Governor Stevens because he was the most prominent headman at that time. Young remained at his traditional home rather than moving onto a reservation and was the main leader of the Steilacoom Indians who remained off-reservation.

In the late 1870s Young, at almost age 80, relinquished his position to his relative John Steilacoom, the son of another tribal leader. Steilacoom remained the head of the tribe until he died in 1906. At that time, because his son was only 8 years old, it was up to the Steilacoom family to put forward another family member as tribal leader. During the interim, descendants of Betsey Latour, member of a leading family related to young Steilacoom's mother, kept the tribe functioning in their role of "subchiefs".

By the early 1910s John Steilacoom's nephew and son assumed leadership of the tribe. These Steilacoom family leaders left the tribe in 1929 and since that time Latour descendants (the Andrews, Bertschy and Sears families), as subchiefs, have maintained the tribe, placing capable leaders in the head position. The current chairperson, Joan Ortez of the Andrews family, took office in 1975, marking the second time a Latour descendant has assumed the role of tribal leader.

V. Relationships with the Other Medicine Creek Tribes

The Steilacoom people have survived as a tribe and have, when necessary, joined forces with the other three surviving Medicine Creek Treaty tribes.

Following the Territorial War and lasting into the early 20th century, the Steilacoom Tribe was involved in large inter-tribal gatherings (carried over from precontact times) near the town of Roy with the Nisqually and Puyallup tribes.

The political discussions that had accompanied the earlier meetings became the focus of Euroamerican style meetings attended by representatives of the 3 tribes that arose around 1908 on the Puyallup Reservation. These meetings ended around 1913 because of frequent, violent arguments.

A commonality of problems and close kinship ties caused the Nisqually and Steilacoom Tribes to again hold joint general council meetings from 1919 until 1951. Since the 1970s the Steilacoom Tribe has been more closely alligned with the Puyallup Tribe, cooperating socially, ceremonially economically and politically.

At the August 1976 Medicine Creek Treaty Council meeting, the Squaxin Island, Nisqually and Puyallup tribes affirmed the tribal status of the Steilacoom Tribe.In a March 1, 1977 letter to the Steilacoom Tribal Council, the Puyallup Tribal Council set forth their opinion of the status of the Steilacoom Tribe regarding U.S. v. Washington:

> The Steilacoom Tribe, alternately acknowledged and denied by the United States ... has been recognized as a full and equal member of the Medicine Creek Treaty Council by Puyallup, Nisqually and Squaxin Island people ... [and] the Steilacoom Tribe of Indians should now be granted full and sovereign rights by the Court.

VI. The Plight of the Steilacoom Tribe of Indians

Although the Steilacoom Tribe was a signator of the Medicine Creek Treaty in 1854 and since that time neither the Steilacoom Tribe nor its members have been the subject of Congressional legislation which has expressly terminated or forbidden a federal relationship, the tribe does not now enjoy the benefits that come with a federal relationship because of the failure of the Bureau of Indian Affairs to currently recognize the Steilacoom as a tribe.

The failure of the federal government to place a reservation in traditional Steilacoom territory led to a greater reluctance among members of the tribe to move onto the reservations established in the territories of the three other large tribes. While many Steilacoom Indians did relocate on the overcrowded and poorly supplied reservations, a substantial number of them remained in their homes and tribal villages. Using traditional political and social practices, they maintained the tribal organization.

Through the years the tribe has continued to meet, select its leaders and interact socially. The center of residence, politics and Steilacoom culture is still in traditional Steilacoom territory, today's southwestern Pierce County. The tribe's membership has held together by a common ancestoral identity, knowing that they were Steilacoom Indians, and a quest to fight for the rights that were supposed to have been guaranteed them by the treaty.

Unlike reservation Indians, the Steilacoom have not had iconographic symbols of culture with which to identify, such as reservation boundary signs and agency buildings. Rather, they have had to cope with maintaining Indian identity on an individual basis, with those who failed to do so withdrawing from the tribe. A driving force behind the Indian identity that remains in today's tribal members is the knowledge that they are Steilacoom Indians and the desire that their status as Indians be returned.

But the question of federal acknowledgment is far from being just a matter of ethnic pride. It also has an impact on a number of other matters that are of primary concern to the tribal community.

The lack of Bureau support has negatively impacted the tribe in a number of key areas:

(a) It cannot receive assistance in developing an indirect rate for program administration. The tribe cannot request administrative funds in grant requests from agencies such as the Administration for Native Americans. They now must operate their government at a lower level than the work load mandates. Therefore certain areas, such as education, cannot be acted upon. Money for the administrative budget now must come from the tribal business operation, cutting into social and cultural programs. One activity that has been eliminated in recent years for financial reasons is an annual intertribal pow wow.

(b) Although the tribe does receive assistance from the Western Washington Agency on enrollment policies and procedures, there is no assistance on personnel training and maintaining enrollment files.

(c) The Steilacoom Tribe is desparately in need of assistance in preserving cultural heritage, e.g. protecting burial and other archaeological sites. Each year a number of burial sites are disturbed and a number of archaeological sites are destroyed. Because of the lack of federal clout, the tribe's cultural heritage is distributed to neighboring tribes or merely kept in storage by the archaeological investigator.

(d) While a number of Steilacoom students are in Title IV programs, the tribe is in need of educational assistance regarding high school graduates and adults.

(e) Without Bureau support, members of the tribe are unable to fish and hunt as guaranteed by treaty; fishing boats have rotted away in members yards. Absent too is the right to obtain fish and game for ceremonial purposes. The latter is a hinderance to activities at the Steilacoom Cultural Center.

(f) The tribe cannot receive Bureau assistance in obtaining tribal property. This has meant that in some instances where ancestoral remains have been offered back to the tribe for reburial the tribe has not been able to accept them due to the lack of a tribal burial ground. In numerous other instances the tribe has had to watch while the remains of Steilacoom ancestors have been given to reservation tribes because the Steilcoom Tribe could not afford the cost of the reburial ceremony or the grave site.

The absence of Bureau recognition has also meant a lack of standing with other federal agencies. This too has negatively impacted the completion of many tribal priorities. For example:

(a) The tribe is unable to apply for surplus G.S.A. property. This effects the ability of the tribe to provide adequate furnishings for the tribal office and cultural center. It also effects the tribe in terms of gaining a land base. Within the past 12 years the tribe has attempted to get property at McNeil Island (then a federal prison) for a residential complex that would serve tribal elders and tribal youth and Fort Steilacoom (property that is surplus to the Bureau of Land Management) for a cultural center. In each case there was strong local support for the tribe, including the Audobon Society, Pierce County and Fort Steilacoom Community College. Fort Lewis, located within traditional Steilacoom territory, has proclaimed that it has surplus property and some non-Indian residents of the county have proposed a land trade of Fort Lewis property to the Puyallup Tribe for property that now comprises the Port of Tacoma. The Steilacoom Tribe strongly opposes the cession of land within its traditional territory to any other Native American tribe and rather desires that the property instead be placed in trust for the Steilacoom Tribe.

(b) Although the tribe has received a number of grants from the Administration for Native Americans, it is unable to apply for numerous federal grants because of its lack of recognized status with the Bureau. When it does apply it must do so through the Small Tribes Organization of Western Washington and lose 20% of total grant award to STOWW for administrative expenses. (c) The tribe is unable to obtain Indian Health Service treatment for all its members, although some do receive treatment from Indian Health Service through the Puyallup Tribe.

Department of Linguistics
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Seattle, WA 98195
May 10, 1988

My first knowledge of the Steilacoom Tribe came during the period 1975-79 when I worked on the Skokomish Reservation for the Skokomish Indian Tribe. There I happened upon a number of individuals who were descendants of members of the Steilacoom Tribe or who knew individuals from Steilacoom. At that time I recorded some information concerning the kinship, genealogy and culture of the Steilacoom Tribe. In 1980 I learned from a researcher who lived in the town of Steilacoom that the Steilacoom Tribe was still an active organization. My first contact with the Steilacoom Tribe came in 1982 when I was introduced to the tribe as a possible researcher by the Native American Research Institute. Since that time I have conducted research on the Steilacoom Tribe from prehistoric times through to the present day.

During the course of my research I have become satisfied that the Steilacoom Tribe today directly descends from the Steilacoom Tribe that was a signer of the Medicine Creek Treaty in 1854. I have been able to trace leadership and membership from the 18th century to the present day and I find that the tribe has used a number of Coast Salish practices to successfully maintain political and social continuity. In studying the histories of the four remaining Medicine Creek Treaty tribes (i.e. Nisqually, Puyallup, Squaxin and

Steilacoom), I find much of their histories (apart from the absence of a Steilacoom Reservation) to be parallel and intertwined. Given this, failure to acknowledge that the Steilacoom Tribe has persrvered as a tribe, in the face of greater odds, would be arbitrary, capricious and/or a prejudgement.

Given that the Steilacoom Tribe is a treaty tribe, the current procedure for gaining federal acknowledgment is too lengthy and costly. With time and money, I believe the case for acknowledging the Steilacoom Tribe would be compelling. However, a large number of the tribe's elders have passed away in the past five years and prospects for a quick resolution of the issue seem slim. I recommend that instead of satisfying the seven criteria, tribes (such as the Steilacoom) with a proported treaty relationship with the federal government need only demonstrate to the Branch of Acknowledgment and Research that they have maintained a political continuity from the time that relationship was established until the present day.

Nile Thompson

Nile Thompson, Ph.D.

TESTIMONY OF ILEEN SYLVESTER

Vice Chairman, Cook Inlet Tribal Council
and
Tribal Operations Specialist, Bristol Bay Native Association

for

Alaska Native Villages

before the

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

HEARING ON THE FEDERAL ACKNOWLEDGMENT PROCESS

May 26, 1988

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to testify today on the Federal Acknowledgment Process as it relates to Alaska Native Villages. My name is Ileen Sylvester. I am the Vice Chairman of the Cook Inlet Tribal Council, and I am also employed as a Tribal Operations Specialist for the Bristol Bay Native Association. Both organizations are regional non-profit corporations which provide a variety of services to Alaska Native villages within their respective regions.

I will speak primarily of two villages: Koliganek and Ninilchik, which are traditional Native villages in the Bristol Bay and Cook Inlet regions which were mistakenly left off the list of federally recognized tribes first published by the Bureau of Indian Affairs in the early 1980s. On behalf of these villages, I am asking for your help in correcting the Bureau's list without making the villages go through the cumbersome and expensive federal acknowledgement process.

While I am most familiar with Koliganek and Ninilchik, I would like to stress that they are not unique. Statewide, more than 30 villages were left off the Interior Department's list of recognized tribes, apparently at random. Ten of the twelve regions of the state have villages in this situation. Despite years of effort by village advocates, the Interior Department has been unable to provide any explanation why these villages were treated differently than villages that made the list, and has failed to offer any solution for them other than to go through the FAP at a cost of thousands of dollars and untold headaches. This is despite recent admission by the Interior Department that _it_ made an administrative error in leaving the villages off the list.

Koliganek is a Yupik Eskimo village on the Nushagak River within the Bristol Bay region, about 70 miles upriver from Dillingham, the regional center where I live and work. My maternal family lives in Koliganek and most of my summers growing up were spent there helping my Grandmother and Mom put up fish for the winter. We have a history of being a nomadic people as most of the other tribes in the Bristol Bay area are. The people of Koliganek have migrated three times that can be documented. Old Koliganek was located at the mouth of the Nuyakuk River. My people migrated to Middle Koliganek in 1939 because at the old village caribou were scarce. In 1962, the village was moved once again, to Koliganek's current location, because of flooding during an early break-up and ice jam.

The Russian Orthodox Saint Herman's Seminary in Kodiak, Alaska have documented in their historical archives the following information about church history in Koliganek:

1. The Russian Orthodox parish in Old Koliganek was started in 1870. The Church was named Saint Yako. The priest that officiated at that time was Father Vassily.

2. The present Church, named Saint Sergie, was built in 1938 at Middle Koliganek. It was moved to New Koliganek in 1964 and renamed Saint Michael.

3. The clergy who have officiated in Koliganek since the parish started in 1870 until now are: Father Vassily, Father Sergius, Father Gregory, Father Basil Sifsof, Father Vassily Epchook, Father Thomas Houland, and currently Father Prokopy Ishnook, a native to the village of Koliganek.

4. The three Bishops that have visited Koliganek since 1870 are: Bishop Zlopin, Bishop Anbrossey, and Bishop Theodosius.

Koliganek had its first one room BIA school in 1952 for grades one through eight. Michael Chase was the first BIA school teacher and taught in Koliganek for two years. My Grandfather, Charlie Nelson, the Koliganek Traditional Council President, was the second school teacher and taught until 1967 when the State of Alaska took over the Koliganek school system.

Our living elders tell stories told them by their grandparents, two generations previous, about living in the Tikchik Lake area at the head of the Nuyakuk River and Koliganek being their summer fish camp until a great sickness came and many of the people died.

Koliganek has about 170 residents. Like most of the villages in the Bristol Bay region, the only government in Koliganek is the Traditional Tribal Council. Until fiscal year 1987, this Tribal Council administered BIA PL 93 638 104 (a) grants. Then, for reasons they don't understand, the 104 (a) grant had to be channeled through the village ANCSA corporation.

Ninilchik, like Koliganek, was recognized by Congress in the Alaska Native Claims Settlement Act and has been a populated Native village throughout historic times. It is located on the east side of Cook Inlet on the Kenai Peninsula near the mouth of the Ninilchik River. A Dena'ia Indian village has existed since 1000 B.C. according to archaeoligical findings and documented historical existence since 1840 through the Russian Orthodox Church archives.

While each village is a distinct entity in terms of history and kinship, for federal recognition purposes it is impossible to distinguish these two villages from neighboring villages which were included on the Interior Department's list. Koliganek, for example, is one of four Yupik Eskimo villages on the Nushagak River, all of which have roughly the same history of contact with the white culture and the same course of dealings with the federal and state governments. Yet the other three Nushagak villages were included on the federal list without having to prove who they are.

The consequences to the villages of not being recognized are severe. The most obvious ones are economic. Since Koliganek and Ninilchik are not on the list of federally recognized tribes, they are not eligible for B.I.A. grants which are the mainstay of Alaska Native governments and service programs. While these grants can, technically, be obtained by the ANCSA village corporations, those corporations are for-profit businesses and are not equipped to provide governmental or social services. Their membership also differs significantly from that of the villages, and the corporate boards are not always willing to undertake the responsibility for administering B.I.A. grants. Ninilchik village leaders estimate that village has lost at least $200,000 in federal funds because it is not on the list of recognized tribes.

Another concern is that federal programs serving Native American individuals are starting to require membership in federally recognized tribes. The new Indian Health Service regulations linking eligibility for medical care to tribal enrollment is one example, and the new eligibility requirements for B.I.A. higher education scholarships are another. Thus the elders of Koliganek are facing the prospect of their children and grandchildren being deprived of benefits which the children of New Stuyahok, 55 miles down river, receive. That simply isn't fair.

Long-term, the very existence of the village will be at stake as families seek to enroll in neighboring communities to preserve their benefits. In a small village, like Koliganek, the loss of just a few families would decrease the school population to the point where the regional school district would have to close the school. If the school closes, other families would be forced to leave and the village would become an empty shell populated only by the old.

Going through the Federal Acknowledgement Process, as the Interior Department would require, is not a practical answer nor a fair one. The FAP petitioning process requires, among other things, proof of continued existence as a tribal community and as a political entity from historical times to the present. While we have no doubt that Koliganek and Ninilchik could meet this burden of proof, to do so would require considerable work, likely including expert anthropological and historical research. There are very few written records dealing with rural Alaska Native villages before the early 20th century, even though historical contacts in places go back to Russian colonization in the 1700s. Ninilchik, which has begun planning for a FAP petition, is contemplating doing research in the Soviet Union.

Another burden imposed by the FAP is the requirement that a current tribal membership roll be submitted with the petition. This will require defining tribal membership for the first time and an expensive and time-consuming enrollment process which would have to be complete before the FAP petition is even filed.

Ninilchik has nonetheless begun plans for going through the FAP because of the B.I.A.'s failure to correct the problem. It has applied for a $50,000 B.I.A. grant to initiate the project, and estimates it will take $300,000 more over three years to complete it. This money, too, would likely be federal money which would otherwise be available to provide needed services to Alaska Natives.

There is no sense in making Koliganek, Ninilchik and similarly-situated villages go through this elaborate process to correct a mistake by the Interior Department. The FAP regulations are not designed or intended to apply to tribes which have in fact been recognized historically but were merely left off a list. Both Koliganek and Ninilchik were expressly recognized by Congress as Alaska Native villages in the Alaska Native Claims Settlement Act and both have received B.I.A. services in the past, including the school where my grandfather taught. There is no question on the part of anyone whether the villages consist of indigenous Alaska Native people. The FAP, as stated at 25 CFR 83.3(b), does not apply to Indian communities "already acknowledged as such or already receiving services from the Bureau of Indian Affairs."

Yet the Interior Department has consistently taken the position that Koliganek, Ninilchik and like villages have to go through the FAP to get on the list, while refusing to articulate why this is so, or even why the villages were left off the list in the first place.

An original version of the list of recognized Alaska Native villages was developed for publication by the Alaska office of the B.I.A. in 1982.. This list included Koliganek and Ninilchik and most if not all of the other villages, but when the final version was published by the B.I.A.'s Washington office more than 30 villages were dropped off. Soon after, various advocates for the omitted villages, including the B.I.A. in Alaska, began corresponding with the B.I.A. in Washington and the Secretary of the Interior in an attempt to get the list corrected or at least get an explanation. The only answer received to this date is that some of the villages were "questioned" - with no explanation of why.

B.I.A. officials within the Alaska area office have told us that no reason was ever expressed by Washington officials as to why these villages were left off the list. Because of the similarity in name between many Alaska Native villages, it is our belief and that of some B.I.A. officials that some villages, at least, were left off because of clerical error or the mistaken belief that they were listed twice. For example, Kaltag, an omitted village, is similar in name to Kalskag, which is on the list. Koliganek is similar to Kongiganak. It is easy to see how clerical errors could be made in duplicating a list of some 200 villages, most of which with non-English names.

That the omissions were purely administrative error was borne out when an attorney for RuralCap, a rural advocacy organization, submitted a Freedom of Information Act request for the B.I.A. files pertaining to the list of recognized Alaska Native villages. The file documents provided by the B.I.A.'s Washington office this year in response to the request do not contain any decisional documents relating to the omitted villages, or anything else showing why they were left off the list.

A letter sent to RuralCap from the Secretary of Interior's office in April of this year acknowledged that the Bureau's list "may contain some administrative errors," and said that Interior is "trying to address that very issue and correct the listing." However, we have since been informed by B.I.A. officials in Alaska that the Interior Department is unlikely to simply correct the list, although it may adopt simplified FAP procedures for use by Alaska villages.

That response would be inadequate. The Bureau circulated a draft document entitled "Procedures for Alaska Tribal Entities to Receive Federal Recognition" in early 1987, and those proposed procedures were nearly as burdensome and complex as the existing FAP. Alaska villages should not have to jump through bureaucratic hoops to correct an administrative error by the Interior Department. Even if the new process costs a village only thousands of dollars instead of the hundreds of thousands that the existing FAP could cost, it would still be too much. It is fundamentally unfair to impose special burdens on Koliganek and Ninilchik to solve a problem they did not cause.

We are asking for your help in convincing the B.I.A. to add our villages and the other omitted villages to the B.I.A.'s list. That is the only fair way to solve the problem.

Thank you, on the behalf of Koliganek and Ninilchik and the other Alaskan Native villages that were left of the Federal Register, for your time in hearing this very urgent matter.

STATEMENT OF ADOLPH DIAL,
PEMBROKE STATE UNIVERSITY,
ON BEHALF OF THE LUMBEE TRIBE

Mr. Chairman and members of the Committee, I am gratified by your interest in the federal acknowledgment process and appreciate the opportunity to testify on that subject. I am Adolph Dial, an enrolled member of the Lumbee Tribe of North Carolina and Chairman of the American Indian Studies Department at Pembroke State University. The Lumbee tribal council asked me to appear at this hearing to express our views on the acknowledgment process.

As you may know, the Lumbee Tribe is the largest non-federally recognized Indian tribe in the United States. Task Force Ten of the American Indian Policy Review Commission estimated our numbers at between 31,000 and 40,000, approximately five times the size of the next largest group identified by the Task Force. We are also one of the most persistent tribes in our effort to obtain federal recognition. Since at least 1881, the Lumbee people have sought federal recognition, then from Congress and since from both Congress and the Department of the Interior. Even though we have been recognized by the State of North Carolina as an Indian tribe since 1885, our efforts to obtain federal recognition have thus far failed.

The closest the Lumbee Tribe has come to federal recognition was with the passage by Congress of the Lumbee Act in 1956, 70 Stat. 254. In its recitals, the bill acknowledged the Indian ancestry of the Lumbees and the continuous existence of the tribe since earliest white contact. The purpose of the bill was to recognize the Lumbee Tribe, but at the urging of the Department of the Interior, the bill was amended before passage to name the tribe as Lumbee but to preclude recognition. The language added to the bill reads, "Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians." Because of that language, the Lumbee Act does not constitute legal recognition of the tribe.

Consequently, the Lumbee Tribe began work on a petition for federal acknowledgment under Interior's regulations shortly after the regulations were finalized. Those regulations are extremely rigorous and require that petitioning groups carry the burden of demonstrating seven factors to obtain federal acknowledgment. Essentially, a petitioning tribe must document its Indian ancestry and continuous existence as a separate political entity since the time of first white contact. Failure to document those facts for any reason means that the group will be turned down by the B.I.A.

The work on the Lumbee Petition for Federal Acknowledgment began eight years ago. It was done jointly by our tribal council, which assumed responsibility for tribal enrollment, and Lumbee River Legal Services, which supervised the research and writing of the petition. Over the years, fifteen staff people and twelve consultants have worked on our petition. The final product responds to each of the seven criteria listed in the recognition regulations and runs over 400 pages in length, supported by 530 documents and 34 reels of newspaper clippings. We are particularly proud of our final roll, which includes only individuals who can show descendancy from a base roll composed of census and other documents dating from 1880 to 1910 and who maintain contact with the tribe. Any question regarding the eligibility of an individual to enroll is referred to our Elders Committee, which is composed of knowledgeable older people from throughout the community. Approximately 35,000 people have applied for and been enrolled through this process. The petition, roll, and supporting documentation were filed with the Branch of Acknowledgment and Research in December 1987.

Even though we have waited more than one hundred years for federal recognition and even though we have fully met the heavy burden placed upon us by the recognition regulations, we must now wait literally years before our petition will be considered. The Lumbee Tribe is frustrated and discouraged. We urge the Committee to seriously consider proposals we would like to make and those made by others today to ease the burden and backlog that Indians face in the petitioning process.

The burden of the acknowledgment regulations

I wish to emphasize at the outset that we do not dispute the general proposition that tribal existence must be demonstrated before recognition is extended to an Indian group. Neither do we dispute the relevancy of the seven criteria used in the regulations to determine tribal existence. However, we disagree strongly with the detail of proof required by the regulations in demonstrating tribal existence. As they are applied by the Branch of Acknowledgment and Research, the regulations unfairly impose very difficult and sometimes impossible burdens on petitioning groups. This proof problem is also related to the lengthy delay petitioners face in obtaining review of their petition. It takes a long time to prepare a petition with the detail required by the Branch and it takes a long time for the Branch to review all that detail in processing the petition. As a result, petitions cannot be more speedily processed unless the petitions themselves are streamlined. For that reason, I'd like to make some observations on the burden placed on tribes in preparing their petitions first, even though our petition is now complete.

First, the regulations require that petitioning groups prove their existence from historical times. See 25 C.F.R sections 83.7(a), 83.7(c). Historical is defined in the regulations as dating back to the earliest documented contact between the aboriginal tribe and non-Indians, either the United States, colonial or territorial governments, or foreign governments from which the United States acquired territory. See 25 C.F.R. section 83.1(l). In the case of many eastern tribes, first white contact occurred during the sixteenth century, even though contact thereafter may have been casual and sporadic until permanent white settlements were established. It is simply unfair to require tribes to demonstrate a continuous political existence from before the time when a white government existed in the area with which the tribe could maintain political relations. The definition of historical should be modified so that the tribe's burden of proving its existence begins with the founding of permanent non-Indian settlements in the area rather than the first white contact.

Second, the regulations require that petitioning groups prove their existence on a substantially continuous basis. See 25 C.F.R. section 83.7(a). Continuously is defined by the regulations as extending from generation to generation throughout a tribe's history essentially without interruption. See 25 C.F.R. section 83.1(m). In other words, tribes must document their existence every thirty years. Oftentimes, documents may not exist for periods longer than thirty years due to a state policy of assimilation, geographic isolation of the Indian group, or some other reason having no relation to whether or not the group functioned as an Indian tribe. Nonetheless, if the group's existence cannot be documented every thirty years, the group's petition will be denied. Tribes should not be penalized for the failure or refusal of the dominant society to record a particular tribe's activity at all times. This definition should be changed to allow for longer gaps in documentation under certain circumstances.

Third, we are concerned about the level of proof necessary in establishing the existence of a community as required in section 83.7(b). The regulations define a community as "people living within such a reasonable proximity as to allow group interaction and the maintenance of tribal relations." See section 83.1(o). But the regulations give no guidance as to how much proof or what kind of proof of interaction is required. Because of the absence of explicit standards on this point, each petitioning group can only guess whether it has adequately proved community. And judged from letters of obvious deficiency done for different petitions, the amount of evidence required varies from case to case for no apparent reason.

In the case of Lumbee, the question here is not how much evidence is available; the amount of evidence is almost limitless. The question is how much evidence do we need to produce in order to satisfy the criterion. Because of the size of our community, we are limited by the availability of resources to commit to the effort rather than by the availability of evidence. We believe we have plainly demonstrated the existence of an Indian community in our petition, but until we receive our obvious deficiency review by the Branch, we do not know whether more evidence will be required.

These concerns -- the definitions of historical, continuously and political authority, and the amount of evidence necessary to prove community -- are shared by a number of petitioning groups. We have discussed these concerns with them, the Native American Rights Fund, and Jack Campisi, an experienced anthropologist in the field. We have all agreed upon certain changes that should be made in the regulations to solve these problems. Mr. Campisi includes the proposed revisions to the regulations in his testimony and I commend those changes to the Committee's consideration.

Finally, I'd like to comment on a concern that applies to all the criteria and that is who evaluates whether a petitioning group has demonstrated the criteria. The Branch of Acknowledgment and Research is a branch division of the Bureau of Indian Affairs and uses Indian preference in hiring. Of course, Indian preference is available only to members of federally recognized tribes. This almost guarantees that the merits of petitions for recognition will be determined by members of presently recognized tribe. We believe that this creates a potential conflict of interest. It is a political fact of life that presently recognized tribes sometimes oppose the recognition of non-federally recognized tribes. Task Force Ten of the American Indian Policy Review Commission noted this dynamic when it observed: "Already recognized tribes have accepted this "small pie" theory and have presented Interior with another political problem: The recognized tribes do not want additions to the list if it means they will have difficulty getting the funds they need." American Indian Policy Review Commission, Final Report, G.P.O. 1977, Vol. I, pg. 476. For this reason, Task Force Ten recommended that a special office independent from the Bureau of Indian Affairs be created to review applications for federal recognition. The creation of a special office to process petitions with its own line item appropriations has much to recommend it. At a minimum, an exception to the Bureau's hiring preference for members of federally recognized tribes should be made for positions at the Branch of Acknowledgment and Research. While we believe the present staff there has made every effort to fairly evaluate petitions on their merits, we also believe that the staff must be increased. We are entitled to some assurance that new staff members will have no tribal biases against non-federally recognized Indian people.

The backlog in the petitioning process

We filed our petition for federal acknowledgment about six months ago. We were originally told to expect obvious deficiency review by mid-summer. Now we are told that our petition will be reviewed for obvious deficiencies in October or November, or nearly a year after we filed the petition. In the meantime, our contracts with experts who assisted in preparing the petition have expired. Julian Pierce, our tribal attorney who supervised the preparation of the petition, has died. And by the time we receive our obvious deficiency review, the material in our petition describing the contemporary Lumbee community will already be out of date. As a result, we will certainly have to update the description of the contemporary community in response to the obvious deficiency letter, but our ability to do so has been impaired by intervening events and the passage of time.

What is worse, we calculate that under the Branch's present work schedule, active consideration of our petition is five to six years away. We have been told that once active consideration of our petition begins, the Branch staff will stop work on all other petitions, placing them even further behind in their work. For that reason, the Branch will understandably be reluctant to begin active consideration of our petition, possibly delaying active consideration even longer. Once active consideration does begin, we can only guess how long it will take. Generally, it takes the Branch one to one and one-half years to consider a petition. But the Lumbee Tribe is more than three times the size of the next largest tribe that has filed a fully documented petition. The genealogical work alone on the Lumbees will probably take two years, given the detail review that the Branch undertakes. Consequently, we expect full consideration of the Lumbee petition to be completed sometime in 1996.

Even then, the process is not over. At that point, the Branch's recommended preliminary finding must be reviewed by the Solicitor's Office and the Assistant Secretary for Indian Affairs before it is published. Some people believe that the Lumbee Act passed by Congress in 1956 is legislation prohibiting the federal relationship within the meaning of section 83.3(e) of the recognition regulations. The Solicitor's Office at the Department of the Interior has never taken a position on this issue. If the Solicitor's Office agrees with that interpretation of the Lumbee Act when asked to review the recommended preliminary finding, then all the years of work and delay by the Lumbee Tribe and the Branch will have been for naught. At that point, our only recourse for obtaining federal recognition will be to Congress.

The Lumbee people cannot in good faith be asked by the United States to abide such a process with the possibility of being told in the end that we don't fall within the scope of the regulations in any event. Our situation is unique because of the further delays we will face due to our size and the risk of an adverse determination from the Solicitor's Office on the Lumbee Act. But our situation is not different in nature from that of other tribes involved in the process. Every petitioning tribe faces literally years of delay in receiving active consideration and even longer in obtaining a final result on their petition. There is no doubt that some of the tribes with fully documented petitions already on file will still be awaiting a final determination on their petition come the twenty first century. This situation is absolutely intolerable.

This situation exists we believe for two reasons. First, the recognition regulations require such detailed and heavily documented petitions, which are in turn reviewed meticulously by the Branch staff, that the process of necessity is very lengthy. As I have already stated, part of the solution lies in sensible revisions to the regulations that will reduce the work in preparing and reviewing petitions. Second, the Administration places no priority at all on this issue and the effort is, consequently, severely underfunded. The present staff at the Branch appears to be conscientious in their work, but they are so overburdened with work as to be very nearly paralyzed.

Under the circumstances, major restructuring of the recognition process is required to put it back on track. Tinkering around the edges will no longer suffice. We suggest that the Committee consider these options:

--creation of a special office dedicated solely to processing petitions for recognition that is independent of the B.I.A., with a separate line item in the budget, and not subject to Indian preference (at least as presently limited to members of federally recognized tribes);

--tripling the professional staff of the acknowledgment office, with specific provisions made for training of new staff members to insure consistency and integrity in results;

--imposition of deadlines on the obvious deficiency process, e.g., two months within the receipt of a documented petition, and on active consideration of the petition, e.g., six months from the receipt of the response to the obvious deficiency review;

--automatic entitlement to federal recognition that applies when the recognition office misses one of its deadlines in processing an application for recognition by more than four weeks.

These options are a dramatic departure from the present system used to process petitions for federal acknowledgment, but the near break-down of the present system calls for a dramatic departure. The issue of recognition for non-federally recognized peoples is a long-standing one that will not go away. Unless some much needed changes are made soon, more and more non-federally recognized groups will turn to Congress for the recognition they have long sought and deserve. The Lumbee people sincerely appreciate this Committee's active oversight on the process and trust that some sorely needed changes will result.

Native American Rights Fund

TESTIMONY OF FAITH R. ROESSEL, STAFF ATTORNEY, NATIVE AMERICAN RIGHTS FUND

BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

OVERSIGHT HEARING ON FEDERAL RECOGNITION OF INDIAN TRIBES

MAY 26, 1988

Mr. Chairman, I welcome this opportunity to share with you and the members of this Committee the testimony of the Native American Rights Fund (NARF). NARF is a non-profit law firm that represents Indian tribes, Indian organizations, and Indian individuals. Our main office is located in Boulder, Colorado; we have a second office in Anchorage, Alaska; and a third one here in Washington, D.C. I am a staff attorney with the Washington, D.C. office, and a member of the Navajo Tribe.

INTRODUCTION

At this time NARF represents seven Indian tribes in their efforts to gain federal recognition before the Bureau of Acknowledgment and Research (BAR). Of the seven, only one is under active consideration, the Southern Paiute of Utah. The Little Shell of Montana and the Houma of Louisiana are currently waiting to be put on active status. And the Mashpee of Massachusetts; the Shinnecock of New York; the Schaghticoke of Connecticut; and the Florida Tribe of Eastern Creek are all in the process of preparing their petitions for recognition.

Most recently NARF successfully advanced through the BAR and the United States Congress the recognition petition and land claims legislation of the Gay Head Wampanoag of Massachusetts. We appreciate your Committee's diligence in getting this legislation through Congress. Prior to Gay Head, NARF successfully represented the Tunica-Biloxi of Louisiana and the Poarch Band of Creeks of Alabama in their recognition efforts.

Consequently, the Senate Indian Committee's deliberations on this topic are very important for the Indian communities we represent. Because our law firm handles so many recognition petitions, we have developed some expertise with the regulations and a working relationship with the BAR staff. We are especially interested in seeing improvements to the process and offer our views and recommendations toward that end.

BACKGROUND

The regulations governing the recognition procedure have not changed nor been modified since they were first promulgated in 1978. Without a doubt the 1978 regulations provided some stability and set of standards that all non-recognized tribes could follow. Prior to the regulations tribes seeking recognition approached Congress directly and recognition occurred on an ad-hoc and political basis.

In 1980, this Committee reviewed the relatively new regulations of October 1978 in its oversight hearing on the Federal Acknowledgment Process. At that time, according to then Committee Chairman John Melcher, the Committee only knew of one petition that had been fully processed. While the number of petitioning tribes was admittedly small (probably due more to a lack of resources to prepare the petitions), even then timeliness was an issue. Senator Melcher in his opening statement expressed the sense of the Committee that because the regulations were relatively new, Congress was delaying any consideration of legislation for the time being and was deferring to the administrative procedure recently created.

NARF at that time recommended that the Bureau of Indian Affairs expedite services to a new tribe and that it set in place an office and means to handle these new responsibilities. Even today NARF finds the BIA ill-equipped to handle new tribes in a timely manner. For one in particular it took several years before BIA services were delivered.

Later, at the 1983 oversight hearing on the Federal Acknowledgment Process, NARF elaborated in greater detail and recommended four key areas for improvement:

1. Timely review of petitions;
2. Financial burden on petitioning tribes;
3. Fair burden of proof; and
4. Increased funding for the BAR staff and office.

The four issues NARF testified to in 1983 are equally applicable in 1988. I would like to elaborate on each, since in some respects our prior testimony provides a benchmark by which to measure any progress.

CURRENT PROBLEMS WITH THE FEDERAL RECOGNITION ADMINISTRATIVE PROCESS

Timely Review of Petitions

In 1983 we reported to this Committee the most serious problem facing petitioning tribes was the tremendous delays throughout the administrative procedure. At that time we stated the entire process -- from submission of a petition for acknowledgment to the actual delivery of services to a newly acknowledged tribe -- would take a minimum of four years. Our experience now tells us we can expect it to take a minimum of eight years and longer.

A typical example of the delay involved is that of our client, the United Houma Nation. In 1981 NARF agreed to represent the United Houma Nation in their efforts to seek federal recognition. Two years later at the 1983 hearing we reported the Tribe was in the process of preparing their petition. Now, five years later in 1988, we report the Tribe has submitted their petition, has responded to an obvious deficiency letter, has met several times with BAR staff, and is currently waiting to be actively considered. As Kirby Verret, the Houma Tribal Chairman explains in his written testimony before this Committee, the BAR informs him it may take 2-3 years before the Houma petition goes on active status. Then, at the earliest, it may take at least one year, and probably longer, before a final determination is made.

NARF recommends a very simple and practical solution to expedite the petitioning procedure -- build in time deadlines. I propose for the Committee's review the following recommendations made by NARF in 1983. Since no changes have been made to the regulations since 1978, nor after the 1980 or 1983 oversight hearings, our remarks are equally relevant today. I quote from our 1983 statement:

> First, the regulations should require that a petition be processed within a certain time from its receipt rather than from the date of so-called active consideration. Even if the time period set for consideration of each petition were generous, say two years, such an amendment of the regulations would at least eliminate the possibility and the actual occurrence of endless delays in obtaining active consideration of a petition. Second, the appeal procedure should be modified so that an unfavorable finding by the Project is reviewed by a third party or group of individuals rather than the

> acknowledgment staff itself. Consideration of an appeal by the acknowledgment staff not only deprives the appealing tribe of independent administrative review, but also effectively suspends the Project's progress on other petitions during the appeal. Third, the regulations should provide that by a date certain following the acknowledgment of a tribe, the Bureau of Indian Affairs shall deliver services to its members. Again, even were the time period a generous one, it would at least assure tribal members that BIA services will be forthcoming by a known date.

NARF asks once again that these proposals be seriously evaluated to reduce the endless delays.

Expense of Preparing a Petition and Continued ANA Funding

During the infancy of the regulations the cost for a recognition petition was probably not as high. But over time the BAR staff and the tribes have become much more astute. From the tribes' view, each petition is precedent setting and must be evaluated in terms of what it will require for the next petitioning tribe. In our experience this means a growing burden of proof, which in turn requires substantial resources.

The amount of time and expense associated with starting a petition and seeing it through, according to our records, can vary between $75,000 to $100,000. This amount reflects payment of services to archivists and researchers, ethnohistorians, anthropologists, genealogists, attorneys and tribal members. The costs increase dramatically if a land claim is tied to the petition. NARF estimates that for the Gay Head petition and attendant land claim we easily spent $400,000. These figures speak for themselves of the enormous financial resources spent on just one petition.

The Administration for Native Americans (ANA) funds status clarification grants to Indian communities for the purpose of assembling a petition for recognition. Clearly the interdependence between the ANA and the Branch of Acknowledgment and Research cannot be overemphasized. Without the ANA the petitioning tribes would have no means to fund the required research. Without the BAR the petitioning tribes would be without a process to seek recognition. A recurring problem is the continued funding of the ANA tribal grantee while their petition is pending. A tribal grantee's petition may be penalized because of the slow review by BAR. For example, the tribe completes its petition, submits it, their grant expires, then much later the BAR may ask for more information. Yet, the tribe has no funds to research the additional information requested. Underlying this problem is the fact that if the petition requirements were clearly defined a petitioner would know the scope and detail of the research required, rather than later finding the BAR really wanted a much more elaborate response. NARF faced that predicament with the United Houma Nation, whereupon we spent an extra $11,000 to satisfy the BAR's request of defining a Houma community.

We ask the Committee to help coordinate the funding of petitions by the ANA with the review of petitions by the BAR. Possibly as a first step a meeting could be convened between the respective offices to begin discussions of coordination.

Fair Burden of Proof

A related issue to the expense of preparing these petitions is evaluating what constitutes a sufficient petition. It poses a practical problem for us in terms of advising our clients as to what are the threshold requirements. In 1979 the BAR staff outlined six component parts of a petition. While they appear clear enough, a considerable amount of work is required to interpret these quidelines. We are confronted continually with asking ourselves what is enough and when do we stop.

Because of our inability to judge whether our clients have met their burden, a substantial amount of time and resources are spent to ensure our clients have presented the most exhaustive case possible.

As a result, NARF is in a catch-22. While we expend the resources necessary, the BAR as such expects this and we are scrutinized more closely. NARF is unaware of, and suspects no other petitioner has been required to submit an ethnographic study. Yet we had to do so with the United Houma Nation.

Again going back to our 1983 testimony, NARF recommended changes to the regulations to ensure a fair burden of proof. These proposals are even more important today. First, historical times should be redefined so that the petition begins at the point of significant white contact, rather than first white contact. Second, the regulations should employ at least some limited presumption of continuity. If a tribe, for example, can document its existence at one point in time and at a later point in time, then it can safely be presumed that the tribe existed throughout the intervening period. Now the regulations require the same level of proof for every twenty-year period of the tribe's history. History has not been kind to Indian tribes, and countless research hours and money have been spent to find that elusive document to show the tribe actually existed during those intervening years. This presumption would greatly assist in placing a fairer burden on the tribes.

Dr. Jack Campisi, a noted anthropologist and expert on the federal acknowledgment process, recommends in his statement before this Committee specific definitions for "historical," "continuously," "political influence," and "contemporary community." NARF supports his attempt to provide working definitions in such a manner that petitioning tribes will understand their burden of proof. Right now there are no consistent criteria.

Increased Funding for BAR Staff and Office

Unquestionably, funding for the BAR must be increased. At the last two Congressional hearings on this subject witnesses recommended doubling the staff and budget. By now the needs have at least tripled. NARF supports the work of the BAR, but without adequate resources we are expecting super-human effort on their part. Until the Department of the Interior views the acknowledgment of tribes as a priority the BAR will remain understaffed and backlogged. We request this Committee recommend increased funding for the BAR to the Senate Appropriations Committee.

CONCLUSION

In closing, NARF views no substantial improvement in the petitioning process over the past ten years. In fact, with the entire federal government facing even tighter fiscal restraints, we cannot realistically expect to see substantive changes to an already stretched system. As a result, our clients face an overburdened program, one that does not promise to improve.

Perhaps the best way to address many of the issues we have raised is through legislation. Our suggestion is not new. In 1977, the American Indian Policy Review Commission recommended that Congress create a special office for a specific number of years, independent from the Bureau of Indian Affairs, to assist in "affirming the federal relationship" with petitioning tribes.

Because the petitioning procedure is at a stalemate, NARF strongly recommends this Committee study the feasibility of legislation as a means to correct the petitioning system. To this end, we volunteer our help and resources.

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Mr. Chairman, I could be delivering the same testimony from 1980, and from 1983 before you today. Nothing has changed. Simple mathematics tells us we will be having oversight hearings well into the twenty-first century, since the BAR can only review two petitions per year, as it now admits, and approximately 75 petitions are still outstanding. I predict we will still be lamenting the lack of timely review, bemoaning the millions of taxpayer dollars already expended, and still trying to make the system work. Nothing short of a major restructuring will change any of what I and the other witnesses have testified to. We ask this Committee to exert the necessary leadership to address these issues.

I thank you for this opportunity to share the views of the Native American Rights Fund and our clients who are directly confronted with the petitioning system.

EVANGELICAL LUTHERAN CHURCH IN AMERICA
Lutheran Office for Governmental Affairs

Testimony of Allogan Slagle, Assistant Executive Director of Advocacy,
Lutheran Office for Governmental Affairs
before the
Senate Select Committee on Indian Affairs
on
Federal Acknowledgement of Unrecognized Indian Groups as Tribes

May 26, 1988

Mr. Chairman and members of the Committee, I am very honored to testify before the Senate Select Committee on Indian Affairs regarding the problems of federal acknowledgement of unrecognized Indian tribes. I am Allogan Slagle, and I am speaking on behalf of the Evangelical Lutheran Church in America (ELCA), composed of over 5.4 million persons, and on behalf of the Association for Non-Federally Recognized Tribes of California. I also speak on behalf of the tribes and bands of unrecognized Indians I am aiding in the process of status clarification, a list of which I have supplied to the Committee's staff according to my most recent information. I have supplied additional information about these tribal communities and their cases for acknowledgement below.

Of over 100 groups in the United States whose status as Indian tribes has never been clarified, about twenty inhabit and are native to California, and in these I have taken particular interest. I must omit from the discussion of the administrative recognition of tribes the matter of restoration of California tribes and others that were terminated in the 1950s and 1960s, since 25 CFR 83.1, ff. only address recognition of previously unrecognized tribes.

Briefly, our concerns are these. There is a significant backlog in the processing of completed petitions, and we strongly recommend that the Select Committee seek to assure that funding levels for acknowledgement operations be increased to meet the demand.

Secondly, the burden of preparing petitions and pressing on with the effort of meeting the requirements of the federal regulations on acknowledgement, as interpreted, is terrible on the tribes and on those who volunteer services and resources to carry on the work. Association for American Indian Affairs and other groups and organizations in the private sector are striving to find ways to meet the needs of petitioning groups, with the cooperation of scholars, students, foundations, and Indian communities, and need support to meet the challenge.

Thirdly, in imposing outrageous burdens of proof on petitioning tribes, the U. S. government assures failure of their cause, or at very least, the protracted delay of any justice, which in is itself a denial of justice. Indeed, the burden of carrying out the process created in 25 CFR 83.1, ff. is unsupportable by any Indian group I have yet encountered in the absence of much donated time, effort and financial resources. No matter how fair the BIA/BAR staff attempts to be, and no matter how they try to see that their decisions reflect a common standard, the perception of many tribes is that there are inequities in the way cases are decided and in the way that the requirements are enforced. Documentation efforts seem to be feeding endless demands. The regulations, as interpreted on a case-by-case basis, nonetheless seem to require that non-recognized Indian groups carry a greater burden to prove political continuity and legitimacy that many federally-recognized tribes, even in the immediate neighborhood.

Past social statements of the ELCA's predecessor church bodies--The Lutheran Church in America and the Evangelical Lutheran Church--as well as the National Council of Churches, Indian Lutheran Board, and other interested organizations, have supported the recognition of Indian tribal sovereignty. Speaking on behalf of all the people I represent here, we support the idea of assembling a group of interested parties and representatives of recognized and non-recognized tribes and organizations to devise a fair system which, while assuring that only deserving groups are recognized, assures that the process is fair, is cost-effective from the side of both petitioning groups and the federal government in the short and long run, and is faster. Too often, I have seen community leaders sapped of their strength to do other essential business in the effort to see the petitioning process to the end. I have mourned elders of some of my client tribes who worked and worried with these efforts until they were incapacitated, ill or dead. The petitioning process should not cost more effort than it is finally worth to the people to whom it means so much.

Evidence of past treaties or agreements, or intergovernmental relations with any sovereign, evidence of descendancy from recognized Indian communities, evidence of collective property ownership and use, and evidence of ongoing community activities and relations are appropriate tests for acknowledgement; however, aggressive and invasive efforts to, in effect, find lapses in a community's self-documentation are a waste and a shame. No rational society, having been responsible for severing someone's arm, would demand that the individual play the piano. I suggest to you that I have just described the equivalent of what the U. S. government is requiring of some of these petitioning tribes.

Legislative recognition should be made available more readily where appropriate and in the presence of an uncomplicated case, and the U. S. should have to prove a case against recognition once the group has made its threshold case, providing review in a timely manner.

Groups that can demonstrate ongoing community life, even with fluctuations in the apparent ascendancy of some governmental regime in a conventional sense, should be freed from the burden of proving that they have enjoined political continuity in a strict sense that was undoubtedly alien to many Indian tribes in any event. Centralized government of a kind familiar to euroamericans at the time Indians encountered them most often was imposed from the outside or from the top down on Indian communities by the U. S. or some other outside government, when indeed such Indian governments did come into being and were condoned.

Tribes are expected, by implication, to demonstrate that from earliest times that, not only have they had no breaks in continuous political acitivity, but that they have had exceptional standards and facilities for maintaining records of any and all such activity. One tribe was told it is "essential" for them to "describe the curent community and include a description of any activities involving the participation of your members," with "a map showing the location of the members' houses," "a comprehensive description of any annual group events attended by your members," the congregational makeup of the tribe's "Indian Church," when the historical narrative of the petition described the importance of the lapse of the Catholic Church in continuing to carry on its mission in the community, in the mission building which the tribe built and gave to the Church, and which has stood empty for over a generation. They are told it is essential to describe the tribe's dances, and to describe "how information about a dance or other social function <is> disseminated to . . . members." They are told that it "essential" to the success of the petition to describe the members' "visiting patterns, including patterns of those who live away from the area." Another tribe was asked to describe the "formal and informal processes by which group cohesion is and has been maintained within" the community." This is a demand for a major fishing expedition which requires the dissection of fish long dead. I would suggest that the Select Committee to inquire as to whether tribes been required to conduct such fishing expeditions since the drafting of 25 CFR 83. Tribes are expected to report in very specific terms how they communicate on a daily basis. Many, if they do have phones, may be able to document toll-calls and long-distance calls, but few will have phone-logs available. To hinge the success or failure of a petition on communication between the majority a tribe living at the old homesite with a minority of people who may work at least part time in local towns or industrial sites strikes tribes as a bit strange. This sort of information is required of the tribes and apparently must be reported for all years of the tribe's period of contacts with whites.

Indian people, who often lack the educational attainment of their non-Indian neighbors, or the resources to do such record-keeping, may find it virtually impossible to dredge up this information, and tribes can not help thinking that the BIA is asking asking highly invasive questions to increase the burden to the point that it cannot be met any more. No tribe has the equivalent of an FBI. Tribal members may balk at supplying detailed information about what often turns out to be very private comings and going to anyone, and their tribal government may lack the authority to require members to "confess all" about whom they communicate with in the community, and when, and why. Many tribes lack the resources to maintain, safely and securely, even the most rudimentary information. Even their reliance on church and court records is risky. Tribes are also requested to supply copies of books, letters, scholars notes and records which are difficult or impossible to supply, whether because archives refuse to allow them to be xeroxed, or because scholars or other professionals will not release them because they are work product.

In one case, I arrived at a county courthouse to request certain court documents about ten years old only to learn that they had not been microfilmed, by oversight, and that the original documents had been scheduled for destruction that week. The same tribe's church records, housed in the nearby town, went up in flames years ago, as did their local tribal Indian school's records, when that building burned. The effort called on could require total participation and education of all the members in order to accumulate the requested information, leaving no gaps, as I understand the requirements, of more than about 20 or 30 years.

Non-recognized tribes would like to know why they are required to supply information useful only to federal agencies to justify refusal to recognize them when their members are struggling to survive day to day. They would like to know why they are required to supply information which no recognized tribe has to supply in order to continue to be federally recognized. They would like to know why, if they do retain sovereignty, that no other government is required to provide such documentation to the United States in order to be recognized as a local government. Their perception is that federal acknowledgement, as administered under the present system, is gradually becoming a systematic method of raising the requirements each time a case goes in until no off-reservation community can meet the burdens. Then the community can be silenced, as far as the U. S. government record is concerned.

Most of the California Native American population died in the latter part of the last century; but many of their communities, though in many cases unrecognized, survive. As I noted in March 1988 to the U. N.'s Human Rights Commission meeting in Geneva, reporting the situation of these non-federally recognized tribes, the result of truly irremediable damage is silence. The error in the unbridled exercise of power by the U. S., in refusing to hear their pleas, or in requiring them to scream to the day they die, is the reduction of these militarily conquered peoples' circumstances to the point that they are heard no longer, regardless of their efforts to be heard. Genuine evil does not lie in competition and conquest by means of published and accepted rules, but in the elimination of populations and their sovereignty regardless of the rules. To create, or implement rules to ensure silence is simply evil.

Federal Acknowledgment in California

California Indians continue to receive perhaps the most consistently negligent treatment ever extended toward people entitled to benefit from the federal-Indian trust relationship. The State of California learned from the example of other states that the best solution to the local Indian problem was to intervene in the process of recognizing Indians in California and their property rights and human rights in general, by preventing the establishment of any reserved rights for California Indians, if at all possible. Eighteen well-known treaties were made with groups of California Indians in 1851-1852, but due to the intervention of California politicians and wealthy entrepreneurs, among others, the Senate never ratified these. The attitude of California toward local Indians made it easy for the United States to ignore the sovereign status of many tribal governments, and for scholars to ignore tribal governments, and generally to take a condescending attitude, at best, toward California's "Diggers." Warning flags should rise on reading Bancroft's peculiar impressions of California Indians:

> The Californians . . . wear no clothes, they build no houses, do not cultivate the soil, they have no boats, no do they hunt to any considerable extent; they have no morals, nor any religion worth calling such. The missionary fathers found a virgin field whereon neither god nor devil was worshipped. We must look, then, to other causes for a solution of the question why a noble race is not found in California. See The Works of H. H. Bancroft: The Native Races of the Pacific, I (1882): 325-327.

Many writers and scholars of the late 1800s shared the bias that christian non-Indians could lay moral and legal claims to "Digger" land and resources without regard to prior Indian title or rights, particularly to property.

Still, many California Indian tribes have been recognized, by various sorts of agreements, and by Congressionally-approved Executive Orders. Generally, the United States has recognized tribes as "domestic dependent nations" by treaty (though the last Indian treaties were made before 1872), by agreement, or by acts of Congress. Under 25 U. S. C. 479, the United States can recognize half-blood Indian groups. Also, under 25 U. S. C. 476, the United States can allow any Indian group living on a reservation to convene an election to adopt a constitution under the Indian Reorganization Act, 25 U. S. C. 461, et seq. Finally, and most importantly here, the United States can recognize a tribe under 25 C. F. R. 83. 1-11. On April 2, 1986, through the able advocacy of Lester J. Marston, of the Ukiah office of California Indian Legal Services, the Coyote Valley, Hopland and Karuk Tribes were able to prevail in a suit against the Department of Interior in which they established their right under 25 U. S. C. 476, as reservation Indians, to have a federally-supervised election to accept tribal constitutions, in order to be recognized by the federal government as Indian tribes. This decision was consistent with the language and intent of the Indian Reorganization Act of 1934. See Coyote Valley Band of Pomo Indians, et al. v. U. S. A., et al., Civil No. S-840-0482 MLS.

The primary concern for this discussion is the alternative of petitioning the Secretary of Interior for federal recognoiton under 25 CFR 83. 1, et seq. To suggest how important it is to get to living tribal consultants, note that the Hayfork Norelmuk Band of Wintu met on May 2, 1987, at Hayfork High School to review and discuss the completed draft of their petition. On May 4, 1987, Gracie McKibbon, daughter of John Doctor, niece of "Whiskey" Billy George, and herself the most important living source of information, and the grand matriarch of the traditional Norelmuk-Trinity Indians—who had granted interviews on her culture to Cora Dubois and Erminie Voegelin in the 1930s and to Harvey Pitkin and Alice Schlichter as recently as 1984—passed away at a rest home on the Hupa Reservation, satisfied that she had held out to do her work of carrying her culture until the work of securing her tribe's future was near completion. In such cases, the work of the ethnographer is not "salvage," but "redemptive" ethnography. Drs. Lowell Bean, Sylvia Vane, Pamela Aldridge and others have worked on petitions for the American Indian Council of Mariposa County, Mariposa, California and the San Luis Rey Band of Mission Indians, Escondido, California. The Mariposa's petition is still in the process of active consideration. The San Luis Rey Luiseno petition is still in the process of completion. First, I shall list tribes who had asked for acknowledgment under 25 CFR 83. 1, et seq. as of December, 1984:

Acknowledged:
1. Death Valley Timbi-Sha Shoshone Band, Death Valley, California. Priority # 51.

Groups whose documented petitions are awaiting review, or have been reviewed, for obvious deficiencies or significant omissions:
1. American Indian Council of Mariposa County, Mariposa, California. Priority # 70. They recently received their fourth letter of obvious deficiency. They have been working on their petition for well over seven years.
2. Shasta Tribe, Inc., Yreka, California. Priority # 83. They have received three letters of obvious deficiency. They received their first letter of obvious deficiency over three years ago.

Groups which have submitted letters of intent to document their case for recognition but which have not yet submitted petitions include:
1. Antelope Valley Indian Community, Coleville, California. Priority # 22. <The third draft of their petition, under my authorship, was updated and amended by the Tribal Council in April, 1988.>
2. Coastal Band of Chumash Indians, Santa Barbara, California. Priority # 80.
3. Dunlap Band of Mono Indians, Dunlap, California. Priority # 92. I understand that their are at least three families here. They have been accumulating documents, and are working on family geneaologies.
4. Ione Band of Miwok Indians, Ione, California. Priority # 2. I have had contact with members, but have had no time to work with them.
5. Juaneno Band of Mission Indians, Santa Ana, California. Priority # 92. I understand that this group is submitting documentation soon, if they have not done so already.
6. Kern Valley Indian Community, Kernville, California. About 700 individuals. Priority # 47. The Tribal Chair., Mr. Ron Vermuth, has requested that I work with his community on a federal recognition project, and is preparing to petition.
7. Mono Lake Indian Community, Lee Vining, California. About 100

individuals. Priority # 21. <This tribe was granted half-blood recognition under 25 USC 479 on September 18, 1979, but is seeking full recognition as an Indian Tribe. The Tribe's cultural rights were cited and preserved in the Mono Lake Scenic Area Act in 1983, including the right to gather traditional foods and conduct religious ceremonies and the like in the Mono Lake Scenic Area, where Indians have lived for several thousand years>.

8. Hayfork Band of Nor-El-Muk Wintu Indians of Northern California, Hayfork, California. Priority # 93. About 380 individuals. In May, 1988, they received from the Bureau of Acknowledgement and Research their initial "letter of obvious deficiencies," requesting information deemed critical, necessary, or useful to their case.

9. North Fork Band of Mono Indians, North Fork, California. Priority # 90. Mr. Ron Goode is preparing their petition at the present time.

10. Plumas County Indians, Greenville, California. About 1000 individuals. Priority # 24. (Maidu Nation) wants to pursue acknowledgement.

11. San Luis Rey Band of Mission Indians, Escondido, California. Priority # 96. About 200 individuals. Their draft narrative is being revised for submission.

12. Tolowa Nation, Fort Dick, Del Norte County, California, some of whose members were plaintiffs in the Lyng, or "G-O Road" case, before the U. S. S. C. case this term. Priority # 85. In May, 1988, they received from the Bureau of Acknowledgement and Research their initial "letter of obvious deficiencies," requesting information deemnied acknowledgment in 1984. I lack information on the events after this denial, but understand that this petitioner has been denied, to date.

The Yokayo Tribe of Indians, near Ukiah, Mendocino County, Ca., numbering about 60 individuals enrolled, submitted a petition with documentation on Feb. 26, 1987, and received a letter of obvious deficiencies in April, 1988. The Ohlone Tribe in the region of Campbell, California has requested assistance in pursuing federal acknowledgement. The Wukchumni Tribe (numbering over 200 individuals) has submitted their intent letter this year. Shasta Nation has received three obvious deficiency letters since 1985, and the American Indian Council of Mariposa has received four. It is unclear whether the Central Valley Wintus or the Wintoon Indians of Redding intend to document separate petitions for federal acknowledgement.

The Demands of the Petititioning Process

Consistent with requirements for analysis and content in 25 CFR 83. 7, a petition narrative includes a statement of facts establishing that the tribe has been identified historically and continuously until the present as "American Indian, Native American, or aboriginal." The work must show that a substantial portion of the group inhabits a specific geographic territory. The narrative works to establish that the group's means of self-government has evolved from an historical American Indian tribal government. Appended to the text there should be a copy of present governing documents of the Tribe, if any, or at least a list of all current members and lists of past members.

To be acknowledged as an Indian tribe under these regulations, a group indigenous to the United States must be ethnically and culturally identifiable, but not otherwise fully acknowledged by the United Stated Department of Interior. (Section 83. 3 a). The criteria do not apply to groups already acknowledged. (83. 3 b). The criteria do no apply to factions and splinter groups separated from a currently-acknowledged federal Indian tribe, unless the group has functioned throughout history to the present as an autonomous tribal entity. (Section 83. 3 d). Nor do the criteria apply to terminated groups, or groups whose acknowledgment has been forbidden. (Section 83. 3 e). Under Section 83. 4, any group may file which believes it deserves acknowledgment with the Federal Acknowledgment Project in Washington, D. C.

The materials in the Petition may be used to satisfy the criteria for federal acknowledgment as described in 25 CFR 83. 7: "The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge tribal existence. All the criteria in paragraphs (a) through (g) of this section are mandatory in order for tribal existence to be acknowledged and must be included in the petition." Below, following the quotation of each subsection, I have indicated briefly how this work supports the acknowledgment:

(a) A statement of facts establishing that the petitioner has been identified from historical times until the present on a substantially continuous basis as "American Indian," or "aboriginal." A petitioner shall not fail to satisfy any criteria herein merely because of fluctuations of tribal activity during various years. Evidence to be relied upon in determining the group's substantially continuous identity shall include one or more of the following:

(1) Repeated identification by Federal authorities;

(2) Longstanding relationships with State governments based on identification of the group as Indian.

(3) Repeated dealings with a county, parish, or other local government in a relationship based on the group's Indian identity;

(4) Identification as an Indian entity by records in courthouses, churches, or schools;

(5) Identification as an Indian entity by anthropologists, historians, or other scholars;

(6) Repeated identification as an Indian entity in newspapers and books;

(7) Repeated identification and dealings as an Indian entity with recognized Indian tribes or national Indian organizations;

(b) Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indians and distinct from other populations in that area, and that its members are descendants of an Indian tribe which historically inhabited a specific area.

(c) A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present.

Further, subsections d and e require a copy of the group's governing document(s), and a listing of the Tribe's approved membership. These documents are available, or in process. The geneaological study already done has used the range of resources suggested in Section E, that is: (1) federally approved descendancy rolls for the purposes of distributing claims, allotments and the like; (2) state, federal and county records which provide a paper trail for proving the descent of contemporary Tolowas from aboriginal Tolowas; (3) church, school, and other enrollment records establishing membership; (4) affidavits of recognition by tribal elders and leaders; (5) other records identifying membership.

Finally, subsection f requires that the Tribe be composed primarily of members not already affiliated with any federally recognized tribe, and g requires that the Tribe not be terminated or forbidden from recognition. The tribe must be composed primarily of persons enrolled in that tribe only, which is not terminated, must have membership essentially distinct from that of any other federally-recognized or terminated group in California, nor can the tribe's recognition have been barred by any federal statute.

TOLOWA NATION OF INDIANS, Del Norte County, California

In 1982, to preserve their cultural and political integrity, the Tolowa Nation sought and obtained funding to pursue federal acknowledgment from the Administration for Native Americans, and they secured continued funding the following year. The Tolowa Tribe and Nation has been under federal supervision and recipients of a variety of federal services (and impositions on their individual liberties) as Indians and an Indian tribal community since the 1850s.

The Tolowa Nation of Indians is an Athapaskan-speaking community whose aboriginal range once included all of what is now Del Norte County, California. The Tribe has lived at its present site for at least 600 years, but probably, much longer. There were 337 enrolled Tolowas, as of March, 1987. There are also at least 200 other persons of Tolowa descent who are not on the Tolowa Nation roll, including the members of the Big Lagoon Rancheria of Smith River Indians, Blue Lake Rancheria, Smith River Rancheria, and Elk Valley Rancheria. This American Indian Tribe presently is seeking recognition by the United States as an Indian Tribe.

Piecemeal recognition of splinter groups of the Tolowa community through the establishment of a series of reservations in the 1850s and 1860s in California disrupted the Tribe and were impermanent, but the community endured. In the early 1900s, portions of the Tribe were settled on the Smith River and Elk Valley Rancherias and on allotments in trust status. It appears that Elk Valley and Gasquet accepted IRA by default, Crescent City formally approved IRA, but Smith River Rancheria rejected federal recognition, under the Indian Reorganization Act of 1934; yet the Rancherias were terminated in the late 1950s, and Tolowas never enjoyed the benefits of federal recognition as a Tribe. Piecemeal recognition of portions of the community as separate communities through untermination of Elk Valley and Smith River as a part of the settlement of the Tillie Hardwick case again leaves a large number of Tolowas as a sovereign community, but one divided by federal policy. The majority of the Elk Valley and Smith River populations are and always have been almost exclusively Tolowa by descent, but subject to the distinct sovereignty of their respective rancherias, as in the period between the establishment and termination of those rancherias. Tolowa Nation is therefore not a splinter group, but the originating and surviving source of the population of the two Del Norte County rancherias.

The author submitted their completed petition (running about 4000 pages, with supporting documents) on May 4, 1987. Receipt was acknowledged by the Bureau of Indian Affairs on May 22, 1987. The Tolowas submitted their approved Roll on July 7, 1987, and the BIA sent their letter of obvious deficiency on April 6, 1988.

Yokayo Tribe of Indians, Ukiah/Talmadge, Mendocino County

The Yokayo Tribe of Indians still lives in the Ukiah Valley in Mendocino County, California, within their aboriginal territory. The Yokayos are seeking clarification of their status as an federal-Indian tribe at this writing. The Tribe was party to one of the 18 unratified treaties (Treaty "P", negotiated by Reddick McKee August 12, 1857). The Yokayo Tribe has a private "trust" land base, which has been held for the benefit of the Tribe in the name of the Yokayo Captains (who were also called "Trustees" between 1904 and 1967, while California was inclined to view the Captains as trustees under California law). This Tribe was proselytized by the Catholic Church in the late 1800s; and the Yokayo Rancheria Catholic Mission, in very delapidated condition, still stands on the tribal land base. The Yokayos also have had a federal trust land base since 1916, due a condemnation action which the U. S. Attorney brought on behalf of the Secretary of Interior against the Tribe. The land was condemned in order to establish a reservation school, in order to silence complaints of Yokayo parents who wanted to enroll their children in local segregated public schools over the protest of the School Board. This Tribe has been in some sort of litigation involving land rights and sovereignty in California and Federal courts since 1886, and was originally a distinct litigant in the California Indian Claims litigation. The members and their descendants have lived on or near that land base since October, 1881, without federal recognition.

The State of California, County of Mendocino, and local non-Indian settlements of Ukiah and Talmadge, ranchers and farmers all have had continuous dealings with these Pomo-speaking people through land transactions, acts and resolutions pertaining to the tribe. Tribal members continue to be treated as Indians in their community, and as different from the rest of the population. A distinct Yokayo community persisted as a tribal entity, with a distinct though changing Yokayo culture in the presence of non-Indians. Yokayo language, as spoken and sung by a number of elderly members, is a living language still taught at home. Leadership of the Tribe has persisted through a continual line of ancestral family leaders and their successors, whose authority in religion, economic and social issues continued despite changes in lifestyle to the present generation. Since attempts to rebuild a land base were successful to a modest extent, the Tribe was successful in preserving its autonomy and political organizations. The Yokayos have a Constitution, Bylaws, and Land Use Code.

On October 3, 1986, the author submitted a documented petition requesting a federal election for approval of a tribal consitution under 25 U. S. C. 476. On October 23, 1986, Harold M. Brafford, Acting

Superintendent of Central California Agency, Bureau of Indian Affairs, denied the request, refusing to acknowledge that the federal trust land which the U. S. has held since 1916 in trust for the benefit of the tribe is trust land: "The Yokayo people live on fee title land and the Bureau of Indian Affairs does not exercise jurisdiction over them," although part of the supporting documents included a copy of the decision in the lawsuit in which the U. S. condemned part of the Yokayo's private trust land in order to establish a federal trust land base. Mr. Brafford encouraged the tribe to submit a petition under 25 CFR 83. 1, et seq., noting that "we feel that the Yokayo Tribe has preserved its tribal identity for many years and could possibly use said documents for federal recognition in the future."

On February 26, 1987, the author submitted a Petition for Federal Acknowledgment of the Yokayo Tribe of Indians, and supporting documents, as required under 25 C. F. R. 83. 1, et seq., to the Federal Acknowledgment and Research Staff at the BIA in Washington, D. C. This is the first occasion in which a tribe has submitted a letter requesting acknowledgment together with supporting documentation. The Petition with supporting documents runs about 600 pages.

On March 25, 1987, Ross Swimmer, Assistant Secretary of the Interior for Indian Affairs, notified Dorene Mitchell, Chair. of the Provisional Council, that the documented Yokayo petition had been received. Announcements followed in the Federal Register on April 13, 1987, at Vol 52, No. 70, p. 11888, and in the Ukiah Journal on May 3, 1987. April 25, 1988, the BIA sent the Yokayos their letter of obvious deficiency.

The Acknowledgment Process after Submitting a Petition

The federal acknowledgement process can be lengthy and extremely expensive for tribes seeking clarification of their status under the present regulations. The receipt of the petition is acknowledged in a notice from the Office of the Secretary to the Tribal Council, and notice of the petition is sent to the appropriate state's Governor and Attorney General, and published in a local newspaper and in the Federal Register.

The Bureau makes a preliminary review of the petition for obvious deficiencies or ommissions, under 25 CFR 83. 9 (b). In the cases of the Tolowas and the Yokayos, this step took one to two years. Then, if all is well, and the Tribe is satisfied, the case goes up on active consideration and public review. An historian, anthropologist and geneaologist examine the petition. It appears that the staff have very limited resources for doing any research beyond the materials supplied them, to the point of asking for copies of published articles, books, manuscripts, and the like. Perhaps additional funding to assure adequate staffing, supplies, and other necessities for operations, would make their operations more workable.

The research team carefully evaluates the petition to verify or add to the information submitted under the mandatory criteria of 25 CFR 83. 7. The team will visit the tribe at least once. The California Indians have been very pleased to learn that two of the staff, Mike Lawson and George Roth, will be visiting in California at a special conference arranged and facilitated by Mr. Ron Goode, Tribal Chair. of the North Fork Monos, May 28-29 at Fresno City College, Fresno, California. The Association of

Non-Federally Recognized Tribes of California voted to request such a meeting on Feb. 6, 1988. Tribes have often expressed a desire for visits from the staff in my nine years in this work, and I have done the same on their behalf informally, with the knowledge that fiscal straints have limited the BAR's travel to the field.

Only a few petitions are considered at a time, and cases are considered by priority number. Since 1978, when the process was instituted, over twenty petitions have been processed. Some are now on active consideration. Several are ready for active consideration, or are awaiting either a preliminary or final staff review for obvious deficiencies and significant omissions. Over sixty are undocumented. It is difficult, given the present resources and conditions, to estimate how long it will take to complete the case-load in California, but I anticipate that it will take the cumulative careers of several scholars to address the backlog in that state alone. The resources to do the preliminary submissions are meager, and the resources to continue the process of addressing all letters of obvious deficiency and appeal are virtually non-existant for any tribe of which I am aware. Donated labor and funds have not met the challenge. The perception of several petitioners is that the letters of obvious defiency are becoming more, even successive ones to any one individual group.

After a case goes up on active consideration, the Bureau of Indian Affairs has one year to publish in the Federal Register its proposed finding and recommendation to grant or deny acknowledgment, with a possible "due cause" extension of up to 180 days with the permission of the Assistant

Secretary of Indian Affairs.

The work of the researcher on submitting the first round of documentation becomes that of an administrator, providing organization and direction in completing the process of exhausting administrative remedies associated with status clarification, and assisting in securing the professional technical assistance required until the project is complete. Disposal of material produced will be decided in concert with the consultants and Tribal Council. The purpose has been to produce and document a narrative ethnography and tribal history. The success of the narrative submitted to the Bureau of Indian Affairs will continue to depend heavily on the group's interactions with its social, political, and natural environments. The period of time it takes to process a petition may occupy the remaining lifetimes of elders needed to carry the political continuity of the tribe.

The Costs of Petitioning

As suggested above, the financial resources available for such work have always been limited, despite the urgent need. The BIA/BAR office clearly lacks resources to provide substantial aid to tribes in order to address inquiries. Scholars wishing to do this kind of research have found little support from their academic institutions, because this kind of research produces scholarship that frankly and honestly advocates. Many scholars, reflecting a current trend against applied anthropology, will dismiss it as an attempt to revive a tribe some scholars and politicians prefer to classify as "extinct." Such research, then, can offer the typical career scholar little hope of material reward. This research will always demand a willingness to search for a truth others with conflicting agendas simply do not want to hear.

The "Toyon" Wintu (Winnimem) Band at Baird on the McCloud River are living in profoundly stressful economic and social circumstances, and have little access to resources for doing federal acknowledgement work. Lacking eligibility for many programs directed toward Indians because they are not federally acknowledged, facing greater limitations on access to these, they lack resources to promote their own cause. Their spiritual leader, Florence Curl Jones, in her 80s, is respected widely as an Indian Doctor for California. In a settlement of Schofield v. Hodel (E.D. Calif., No. F 85-1322 MLS)—the case in which the U. S. worked to remove residents from a federal residential housing tract at Baird, California, which had provided housing for many members of the Tribe—the residents agreed to discontinue residential use of the facility in exchange for the property's being held by the BIA for five to eight years to enable the Tribe to pursue federal recognition and tribal acquisition of the property, with Wintu tribal use of the property to be permitted during that period. In light of proposed IHS eligibility regs., the Tribe must be recognized in order for its members to be eligible for Indian Health services. Of course, they could rely on county services, except that Shasta County closed down those services in October, 1987, for budgetary reasons. Doing research for a federal acknowledgement petition requires access to local archives and libraries, and due to the same budgetary crisis which resulted in the closing of the County Hospital, Shasta County closed down its library system in mid-October, and after opening again for a few hours per week, has closed them again. Shasta County may dispose of collections and/or facilities.

Aside from working on a number of petitions, I have been coordinating efforts with several interested organizations, including the Association on American Indian Affairs (AAIA) in particular, in this matter. The AAIA commissioned attorney and U. of Alaska professor Steven Conn to contact groups seeking recognition nationwide, look into the details of the recognition process and to identify those with expertise operating in the field. On contacting over 40 groups, asking about their interest in an AAIA effort in the field, their progress in preparing petitions, whether they had or needed assistance in completing petitions, Mr. Conn found great interest matched with lack of resources on the part of the groups.

The AAIA is seeking to do more petitions at less cost, to increase the number of quality petitions by development of more resources, to help petitioners become more active participants in the effort, to work with Indian organizations to increase the BIA's capacity to deal with petitions and mace the process of recognition fairer and more efficient. A panel of authorities was established, including the author.

In a letter of September 17, the AAIA noted, "Almost 25% of the tribes seeking federal recognition are located in California." Given the geographic concentration of these tribes and the preliminary groundwork that has been done with some of the tribes, interested organizations such as AAIA, and funding agencies, would be in a good position to test a system in California before expanding the program to other parts of the country. The advantage of such a pilot program is that interested organizations would have the opportunity to work out 'bugs' in the system at a manageable cost, while at the same time having a direct impact on a significant percentage of the tribes seeking recognition. Interested organizations could find candidates to do research, arrange for training, monitor work of researchers, coordinate activities of interested parties, maintain links between and among the researchers, tribes and BIA, and help groups obtain funds for recognition efforts. The Indian Ministry Task Force of the Joint Strategy and Action Council, representing a number of major U. S. churches, adopted a resolution supporting these efforts at recent meetings.

The petition may succeed as scholarship, but fall short of its goal as advocacy. If it is found better advocacy than scholarship, but helps achieve the goal of federal acknowledgment for the Tolowa Nation, perhaps it will have brought us all a step closer to recognizing the sovereign rights of an aboriginal community which has the purpose of surviving as a community whatever may befall them. I have operated under the assumption that it deserves to succeed as advocacy only if it is good scholarship. Many would agree that the world's great powers and its intellectual leaders need greater respect for the sovereignty and natural rights of indigenous peoples, and the strength and survival capability of its enduring communities. Working for socially responsible goals as defined by the immediate client Indian community as well as for the various disciplines whose tools one uses, are necessary effects and aims of researching and composing a case for status clarification. This work must also be found to serve needs of the United States as a whole, recognizing that the federal-Indian relationship would not exist if it did not serve social, political and economic interests common to all American citizens.

Regardless of the result of the recognition process, Tolowa Nation may outlast the case, the argument, the disciplines whose professors argue the matter, and the forums in which they argue it. That would be a fitting vindication of their claim to tribal identity, indeed.

Statutory Requirements under 25 CFR 83.1, et seq., for Petitions for Federal Acknowledgment

The requirements for status clarification are authorized under 5 U. S. C 301; secs. 463 and 465 of the Revised Statutes, 25 U. S. C. 2 and 9; and 230 DM 1 and 2. The source is 43 FR 39361, Sept. 5, 1978, unless otherwise indicated, redesignated at 47 FR 13327, March 30, 1982. The governing criteria appear at 25 CFR 83. 1-11, April 1, 1985.

Consistent with requirements for analysis and content in 25 CFR 83. 7, this petition includes a statement of facts establishing that the candidate tribal members and the tribe itself have been identified historically and continuously until the present as "American Indian, Native American, or aboriginal." The tribe must produce historical, anthropological, ethnographic and other data to prove their substantially continuous political tribal existence and autonomy, with no more than a generation-long gap in political leadership.

The petition must show that a substantial portion of the group inhabits a specific geographic territory. For example, the Wampanoag Tribl Council of Gayhead, Martha's Vineyard, Massachusetts were recognized on February 8, 1987 as the result of an appeal of the rejection of their case in 1984. Jack Campisi, an expert on the federal recognition issues of Eastern tribes, helped Native Ameican Rights Fund win the appeal of the case—which represented the first and only reversal of an initial denial of a petition for federal recognition—by proving that even though tribal members had moved into metropolitan areas as far as fifteen miles from the aboriginal tribal land base, there was still a substantial portion of the enrolled population still living in the zone of the traditional land base.

The petition must establish that the tribe's means of self-government has evolved from an historical American Indian tribal government. Often, the tribe can produce a governing document, and state how they came to adopt such a legal code. The tribe must convince the U.S. that the governing document represents the reformation or continuation of aboriginal government in a revised form, though the code need not be based on traditional law. If there is no written code, the tribe must at least present all current and earlier lists of members, whether created by the tribe itself, or the U.S.

To be acknowledged as an Indian tribe under these regulations, a group indigenous to the United States must be ethnically and culturally identifiable, but not otherwise fully acknowledged by the United Stated Department of Interior. (Section 83. 3 a). The criteria do not apply to groups already acknowledged. (83. 3 b). The criteria do not apply to factions and splinter groups separated from a currently-acknowledged federal Indian tribe, unless the group has functioned throughout history to the present as an autonomous tribal entity. 25 CFR 111.4 expressly forbids individuals from receiving dual entitlements (such as distributions of assets) from more than one federally recognized tribe. Knowledge of these facts and policies has not prevented some groups or factions composed of members of one or more federally-recognized tribes from seeking federal recognition. (Section 83. 3 d). Nor do the criteria apply to terminated groups, or groups whose acknowledgment has been forbidden. Tribes can go to Congress or to the federal courts in order to get restoration of status. (Section 83. 3 e). Notwithstanding these commensensical limitations, under

Section 83. 4, any group may file which believes it deserves acknowledgment with the Federal Acknowledgment Project in Washington, D. C., regardless whether the tribe can satisfy the tests of the recognition criteria or not.

The materials in the petition may be used to satisfy the criteria for federal acknowledgment as described in 25 CFR 83. 7: "The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge tribal existence. All the criteria in paragraphs (a) through (g) of this section are mandatory in order for tribal existence to be acknowledged and must be included in the petition." Below, following the quotation of each subsection, I have indicated briefly how this petition supports the Candidate tribes' case for acknowledgment:

(a) A statement of facts establishing that the petitioner has been identified from historical times until the present on a substantially continuous basis as "American Indian," or "aboriginal." A petitioner shall not fail to satisfy any criteria herein merely because of fluctuations of tribal activity during various years. Evidence to be relied upon in determining the group's substantially continuous identity shall include one or more of the following:

(1) Repeated identification by Federal authorities;

(2) Longstanding relationships with State governments based on identification of the group as Indian.

(3) Repeated dealings with a county, parish, or other local government in a relationship based on the group's Indian identity;

(4) Identification as an Indian entity by records in courthouses, churches, or schools;

(5) Identification as an Indian entity by anthropologists, historians, or other scholars;

(6) Repeated identification as an Indian entity in newspapers and books;

(7) Repeated identification and dealings as an Indian entity with recognized Indian tribes or national Indian organizations;

Tribes which have made treaties or other constructive arrangements with non-Indian governments should be deemed to have established a prima-facie case for acknowledgement. The burden of proof should shift to the United States to show that the tribes in question were in no way inhibited from engaging in normal political and cultural activities. It is outrageous to demand that tribes which were forbidden to practice their religions or have community assemblies carried on normal relations, or that they have carried on business as if they were IRA-1934 tribes. Other recommendations of this kind, designed to help tribes, administrators, scholars and advocates to address the inequities and horrendous burdens of the recognition process, should be considered by the Select Committee, and we agree with others who have suggested that a panel should be assembled to make such recommendations.

In California, many tribes attempted to make treaties with the U.S. during the 1850s. Reddick McKee, Wozencraft, and their associates negotiated 18 treaties with scores of California tribes between 1851 and 1852, though these were never ratified by the Senate. The U.S. also made other sorts of agreements or contracts with some tribes, without ratification by the Senate. The U.S. also actually demonstrated its knowledge of tribes in California, subjected them to domination, and deprived them of property and defense, without bothering to formally recognize them. Tribes must attempt to produce evidence of such formal or informal relationships.

The State of California, as well as county and city governments admitted the existence of non-federally recognized tribes in their vicinity or within their boundaries. In the early 1850s, Del Norte County made an illegal treaties with certain Headmen, namely "Charley" (also called "Swi-Net-Klas," or "Srs'-Not'l-Kush"), Yutl'-Hosh-Setl ("Joe Hostler"), and Gylish (Yutl-Ding'-On) of Tolowa Nation, in violation of the Indian Non-Intercourse Act of 1834. When it appears that California or other local governments ever tried to regulate, dominate, interact with or interfere with such tribes, and there is historical evidence of such actions, the candidate tribes can use such evidence as proof of continuous existence, as well.

Many courthouses have records of Indian land holdings, including Indian allotments, marriages, births and deaths. Indian missions and churches often have such records, as well. Many tribes ran their political functions in the churches and under cover of church protection, and can show political continuity by showing that lines of leadership were continuous, and that religious and political leadership were synonymous. Often, leaders of the old Indian religions co-opted christian churches, or merged the tribal religious functions with the christian ones. In pre-contact times, the Tolowas lived under the leadership of Headmen (who dominated the religious, political, social and economic life of the tribe). Headmen who survived the early massacres became religious leaders in the Methodist, Foursquare and Indian Shaker Churches in Del Norte County, and quickly took over the local Methodist mission at Guschu Hall at Smith River, making it the seat of Tolowa political activity, and the home of the Del Norte Indian Welfare Association (1934). Traditional ceremonies and dances have been held there, even as missionary activities continued unabated. All this is apparent in Del Norte County records and church records.

Many unrecognized California Indian tribes have been objects of extensive investigations by anthropologists, historians, journalists, and other authors. The Tolowas have been studied very extensively since the birth of modern anthropology. The records of such studies can provide indispensable evidence of continuous tribal existence. The federal acknowledgment staff includes anthropologists and historians who are particularly interested in evaluating such evidence. Also, the researchers who submit recognition petitions may produce a wealth of new ethnographic evidence in the course of their investigations, which may prove to be extremely valuable to the tribe and to academicians in the future. Of course, recent publications, including those produced as by-products of federal recognition projects, may be extremely valuable in proving tribal political continuity.

Tribal participation or representation in local and national Indian organizations, and recognition of candidate groups by neighboring federally-recognized tribes, can be of some help in establishing a case for acknowledgment.

(D) Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indians and distinct from other populations in that area, and that its members are descendants of an Indian tribe which historically inhabited a specific area.

The Yokayo Tribe, for example, can meet this requirement, they believe, because they can show maps, federal, tribal, state, city, church, school, and county records proving their continual association with the Ukiah Valley in Mendocino County, California.

(c) A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present.

The Tolowas and the Yokayos have records of tribal leadership extending to the time of contacts and treaty-making with non-Indians. The Yokayos, for example, have a Council which includes lineal descendants of the tribal leaders from the time of conquest.

Further, subsection (d) requires a copy of the group's governing document(s), and subsection (e) requires a current listing of the Tribe's approved membership. The geneaological studies for the Tolowa and Yokayo cases have incorporated the range of resources suggested in subsection (e), that is: (1) federally approved descendancy rolls for the purposes of distributing claims, allotments and the like; (2) state, federal and county records which provide a paper trail for proving the descent of contemporary Tolowas from aboriginal Tolowas; (3) church, school, and other enrollment records establishing membership; (4) affidavits of recognition by tribal elders and leaders; (5) other records identifying membership.

Finally, subsection f requires that the Tribe be composed primarily of members not already affiliated with any federally recognized tribe, and g requires that the Tribe not be terminated or forbidden from recognition. The tribe must be composed primarily of persons enrolled in that tribe only, which is not terminated, must have membership essentially distinct from that of any other federally-recognized or terminated group in California, nor can the tribe's recognition have been barred by any federal statute.

Here are two federal acknowledgment cases which I am handling:

TOLOWA NATION OF INDIANS, Del Norte County, California

In 1982, to preserve their cultural and political integrity, the Tolowa Nation sought and obtained funding to pursue federal acknowledgment from the Administration for Native Americans, and they secured continued funding the following year. The Tolowa Tribe and Nation has been under federal supervision and recipients of a variety of federal services (and impositions on their individual liberties) as Indians and an Indian tribal community since the 1850s.

The Tolowa Nation of Indians is an Athapaskan-speaking community whose aboriginal range once included all of what is now Del Norte County, California. The Tribe has lived at its present site for at least 600 years, but probably, much longer. There are 337 enrolled Tolowas, as of March, 1987. There are also at least 200 other persons of Tolowa descent who are not on the Tolowa Nation roll, including the members of the Big Lagoon Rancheria of Smith River Indians, the Smith River Rancheria, and the Elk Valley Rancheria. This American Indian Tribe presently is seeking recognition by the United States as an Indian Tribe. As their attorney and principal researcher for their federal recognition case, I completed and submitted their brief to the Bureau of Indian Affairs for active consideration through the Federal Acknowledgment Staff on May 9, 1986, submitted additions in July, 1986, and submitted the Base Roll on March 29, 1987.

Piecemeal recognition of the Tolowa community through the establishment of a series of reservations in the 1850s and 1860s in California disrupted the Tribe and were impermanent, but the community endured. In the late 1800s and early 1900s, portions of the Tolowa Tribe were settled on the Smith River Reservation, Klamath Reservation, Hupa Reservation, and on the Smith Island (also called Tillas or Stundossun Island, which washed away in 1906), the Big Lagoon, Blue Lake, Trinidad, and Elk Valley Rancherias, as well as on individual or family allotments in trust status. It appears that Elk Valley and Gasquet accepted IRA by default. Crescent City formally approved IRA. Smith River Rancheria rejected federal recognition, under the Indian Reorganization Act of 1934. Yet these Rancherias were terminated in the late 1950s, and in all those years the Tolowa Nation had never enjoyed the benefits of federal recognition as a Tribe. Piecemeal recognition of portions of the community as separate communities has occurred, as in the restoration of Elk Valley and Smith River as a result of the settlement of the Tillie Hardwick case again leaves a large number of Tolowas as a sovereign community, but one whose status never has been clarified. The majority of the Elk Valley and Smith River populations are and always have been almost exclusively Tolowa by descent, but subject to the distinct sovereignty of their respective rancherias, as in the period between the establishment and termination of those rancherias. Tolowa Nation is therefore not a splinter group, but the originating and surviving source of the population of the two Del Norte County rancherias.

The author submitted their petition for initial review (running about 2000 pages single-spaced, with supporting documents) on May 4, 1987. Receipt was acknowledged by the Bureau of Indian Affairs on May 22, 1987. The Tolowas submitted their approved Roll on April 7, 1987, and are awaiting further action at this writing. The Elk Valley and Smith River Rancheria councils have expressed no inclination or intention of adopting members of Tolowa Nation onto their rolls, but treat Tolowa Nation as a distinct entity.

Yokayo Tribe of Indians, Ukiah/Talmadge, Mendocino County

The Yokayo Tribe of Indians still lives in the Ukiah Valley in Mendocino County, California, within their aboriginal territory. The Yokayos are seeking clarification of their status as an federal-Indian tribe at this writing. The Tribe was party to one of the 18 unratified treaties (Treaty "P", negotiated by Reddick McKee August 12, 1857). The Yokayo Tribe has a private "trust" land base, which has been held for the benefit of the Tribe in the name of the Yokayo Captains (who were also called "Trustees" between 1904 and 1967, while California was inclined to view the Captains as trustees under California law). This Tribe was proselytized by the Catholic Church in the late 1800s, making this rancheria probably the northern-most California Mission Tribe, rather than any in Sonoma County; and the Yokayo Rancheria Church, in very delapidated condition, still stands on the tribal land base. The Yokayos also have had a federal trust land base since 1916, due a condemnation action which the U. S. Attorney brought on behalf of the Secretary of Interior against the Tribe. The land was condemned in order to establish a reservation school, in order to silence complaints of Yokayo parents who wanted to enroll their children in local segregated public schools over the protest of the School Board. This Tribe has been in some sort of litigation involving land rights and sovereignty in California and Federal courts since 1886, and was originally a distinct litigant in the California Indian Claims litigation. The members and their descendants have lived on or near that land base since October, 1881, without federal recognition.

The State of California, County of Mendocino, and local non-Indian settlements of Ukiah and Talmadge, ranchers and farmers all have had continuous dealings with these Pomo-speaking people through land transactions, acts and resolutions pertaining to the tribe. Tribal members continue to be treated as Indians in their community, and as different from the rest of the population. A distinct Yokayo community persisted as a tribal entity, with a distinct though changing Yokayo culture in the presence of non-Indians. Yokayo language, as spoken and sung by a number of elderly members, is a living language still taught at home. Leadership of the Tribe has persisted through a continuous line of ancestral family leaders and their successors, whose authority in religion, economic and social issues endured despite changes in lifestyle to the present generation. Since attempts to rebuild a land base were successful to a modest extent, the Tribe was successful in preserving its autonomy and political organizations. The Yokayos have a Constitution, Bylaws, and Land Use Code.

On October 3, 1986, the author submitted a documented petition requesting a federal election for approval of a tribal consitution under 25 U. S. C. 476. On October 23, 1986, Harold M. Brafford, Acting Superintendent of Central California Agency, Bureau of Indian Affairs, denied the request, refusing to acknowledge that the federal trust land which the U. S. has held since 1916 in trust for the benefit of the tribe is trust land: "The Yokayo people live on fee title land and the Bureau of Indian Affairs does not exercise jurisdiction over them," although part of the supporting documents included a copy of the decision in the lawsuit in which the U. S. condemned part of the Yokayo's private trust land in order to establish a federal trust land base. Mr. Brafford encouraged the tribe to submit a petition under 25 CFR 83. 1, et seq., noting that "we feel that the Yokayo Tribe has preserved its tribal identity for many years and could possibly use said documents for federal recognition in the future."

On February 26, 1987, the author submitted a Petition for Federal Acknowledgment of the Yokayo Tribe of Indians, and supporting documents, as required under 25 C. F. R. 83. 1, et seq., to the Federal Acknowledgment and Research Staff at the BIA in Washington, D. C. The Petition with supporting documents runs about 600 pages.

On March 25, 1987, Ross Swimmer, Assistant Secretary of the Interior for Indian Affairs, notified Dorene Mitchell, Chair. of the Provisional Council, that the documented Yokayo petition had been received. Announcements followed in the Federal Register on April 13, 1987, at Vol 52, No. 70, p. 11888, and in the Ukiah Journal on May 3, 1987.

Presently, and for the last two summers, the Yokayo Rancheria's residents have lacked adequate and sanitary supplies of water. The local

Indian Health board has supplied water. They cannot afford to drill a new well. The BIA will supply no such services.

On behalf of the Evangelical Lutheran Church in America, the Association for Non-Federally Recognized Tribes of California, and the individual tribes I represent, and myself, I would like to thank you for this opportunity to address the Select Committee. We offer these suggestions with the hope that they may prove of some assistance in your deliberations, and hope to assist you further in your efforts to reform the process of acknowledgement.

Testimony to the U.S. Senate Select Committee
on Indian Affairs Regarding the Subject
Federal Recognition of Indian Tribes, May 26, 1988

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The process of Federal Acknowledgment of Indian Tribes confronts us with serious moral and practical problems. The procedures have proven unwieldly, expensive, and, as I shall argue, often inappropriate. Many groups of descendants of the First Americans are being unduly delayed in their efforts to obtain federal recognition, and some may have been, or will be, denied such recognition because of overly stringent applications of inappropriate criteria of evaluation. The problems are urgent. Without a more expeditious and equitable handling of petitions, many unrecognized tribes will suffer from inadequate health care, diminished educational opportunities, and consignment to a permanent socioeconomic underclass. I think we can and should do better.

It is a mistake to place the blame for the present state of affairs solely on the Branch of Acknowledgment and Research of the Bureau of Indian Affairs. These well-intentioned and scholarly proficient public servants are understaffed, and they labor under a set of guidelines that are at once too rigid in their range and too flexible in their interpretations.

I will single out three areas in which, I feel, the guidelines appear to defeat the purposes for which they were intended.

First is the key issue of descent. Descent is surely a prime consideration in deciding which groups deserve federal recognition as Indian tribes and which do not. However, as Professor Jorgensen will effectively argue, descent cannot always be determined by simplistic genealogical reckoning. Out-marriage, or exogamy, is a deeply rooted pattern in Native North America; adoption was a common practice both for individuals and for whole groups of non-tribal members; and modes of reckoning descent, as well as the cultural significance of descent, varied widely in different social systems. The guidelines appear to presuppose and emphasize our own biological and folk theories of descent and seem to ignore critical social and cultural variables.

A second area of concern is the criterion of establishing a "substantially continuous" existence as a tribal group. Continuity and discontinuity are relative terms, the appropriateness of which is difficult to ascertain in any absolute sense. Native American social systems, including the political sector, displayed considerable dynamism in prehistoric time, and the rate of change greatly accelerated as a result of direct and indirect contact with Europeans. Many tribes disappeared through devastation caused by disease, warfare, ecological disruptions, and psychological despair. Others retained only fragmentary vestiges of their former political systems, while still others, often under pressure, adopted forms of organization based on Euro-American models or expectations. Tribalism is often mistakenly viewed as a primordial condition rather than as an adaptive, or maladaptive, response to historical circumstances. Correlative to some of these assumptions is the pervasive idea that tribalism is a developmental stage or a fixed set of identifications that once lost cannot be regained. Thus we tend to see detribalization as an irreversible process. We fail to take sufficient cognizance of the recurrent examples of retribalization, not only among Native Americans but as a pervasive, world-wide phenomenon. Cultural renewal is widespread today and was equally so yesterday. It is not incidental that such past and present governmental initiatives as treaty negotiations, the establishment of reservations, the Allotment Act, the Indian Reorganization Act, the Indian Claims Commission, the threat of Termination, and, yes, the Federal Recognition program have all provided significant sparks to ignite movements toward retribalization.

The third area that I wish to address concerns problems of documentation inherent in the field of ethnohistory. Petitioners for federal recognition are required to document genealogy and tribal continuity through a search of written records. After submission of the petition, the Branch of Acknowledgment and Research begins its own arduous and time-consuming review of the documentary evidence, checking and re-checking the validity and reliability of information in the petition. Some use of oral testimony and direct fieldwork is encouraged, but the bulk of substantial evidence rests on written sources. If I have learned anything as an ethnohistorian, it is that written documents must be carefully contextualized and critically evaluated not only against the cultural realities of the society being examined, but also with all due concern for the perspectives and biases of the observers. But I have also painfully come to realize that even the most scrupulous ethnohistorical interpretations often fall short of revealing the course of a group's history. Very simply put, not everything of importance gets recorded; documentation may be missing for long periods of time and be absent at crucial junctures of a group's history. In privileging written material, undocumented people become ahistoric in our eyes. What we fail to appreciate is that the people may have their own notions of who they are, and they may have their own distinctive sense of historical consciousness. The units of historical analysis are usually considered to be events, but what are events for a Euro-American may not be events for an Indian, and vice versa.

These observations appear to have particular relevance with respect to unrecognized tribes. Their frequent invisibility in the historical record may reflect the fact that their existence did not impinge directly on Euro-American awareness through direct confrontation or through involvement in dramatic events. As Adolph Dial eloquently testified, who ever heard of the Lumbees before their well publicized set-to with the Ku Klux Klan? Often the low profile was deliberately maintained to avoid discrimination, persecution, or hostile encounters. Avoidance often served as an adaptive strategy for cultural and social survival. Thus I remain suspicious of interpretations that assume gaps in the documentary record are evidence that a tribe ceased to exist as a viable sociopolitical entity.

I will conclude with some practical suggestions:

1) The guidelines should be simplified and be brought more in line with modern scholarship and realities. 2) More personnel should be allocated to the Branch of Acknowledgment and Research in order to help them reduce the appalling backlog of cases. 3) The time and resources of the Branch of Acknowledgment and Research should more productively be spent to assist in the framing of petitions, with the hope that such effort may lead to a reduction in the number of "obvious deficiencies." 4) An oversight or appeal committee should be created to review cases with controversial outcomes. Such a committee might be composed of legal schools, historians, anthropologists, and respected tribal representatives. Finally, steps should be taken to make the relationships between the petitioners and the Branch of Acknowledgment and Research less adversarial and more mutually cooperative and constructive.

Thank you for your attention.

TESTIMONY TO THE U.S. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS "ON THE PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE" AT ITS OVERSIGHT HEARING ON FEDERAL RECOGNITION

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May 26, 1988

I have studied [4310-02] Title 25--Indians, Chapter 1--Bureau of Indian Affairs, Department of the Interior, Part 54--Procedures for establishing that an American Indian group exists as an Indian tribe (Federal Register Vol.43, No. 172---Tuesday, September 5, 1978). My intention was to assess the appropriateness of the procedures followed by the Bureau of Indian Affairs in determining whether a petitioning entity will be acknowledged or denied acknowledgment as an Indian tribe.

I herewith bring general and specific considerations to the attention of the U. S. Senate Select Committee on Indian Affairs. I will take up general considerations first.

I. Inclusion vs. Exclusion as Guiding Principles

General questions are raised by Chapter I, Part 54, PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE. The fundamental question is whether the guidelines and procedures are meant to facilitate the acknowledgment of groups that reasonable people will agree have just claims to status as a federally recognized tribe, or whether the guidelines and procedures shall give precedence to assuring that groups with fraudulent claims are denied acknowledgment. An emphasis on exclusion if too pronounced, will result in the exclusion of groups whose claims are fraudulent or far-fetched, but also others whose claims may be strong but whose abilities to demonstrate their claims may be weak. One price of strengthening defenses against cheaters by elaborating criteria will be the rejection of some worthy applicants on what will be seen to be no more than "technical grounds." Such rejections may not only be unjust, they will likely serve as grounds for further actions, including appeals, requests for special legislation and the like.

Criteria and guidelines sufficiently comprehensive to assure the rejection of most fraudulent and far-fetched applications will be expensive for the administrative agency and for _all_ applicants. They will also take more time to complete than simpler procedures, require more personnel and lead to more appeals.

Guidelines and procedures should not be needlessly rigorous. They should be based upon a careful assessment of the reality of the problems with which they must cope. If either general experience or formal review of previous cases indicate that few bogus claims are actually being made, it may be possible to adopt simpler guidelines and simpler and more expeditious procedures.

Such guidelines and procedures will reduce demands upon BIA personnel and will make applicants happier. Metaphorically, it is wasteful and unwise to devise an elaborate and expensive safe to protect a valuable that no one is trying to steal.

II. Are Some Regulatory Guidelines Inappropriate? The Worthy but Unacknowledged Case.

A related matter is broached explicitly on the first page of part 54 (p.393631, column 3, 3rd paragraph) in which it is recognized that

> there will be groups which will not meet the standards required by these regulations. Failure to be acknowledged pursuant to these regulations does not deny that the group is Indian. It means that these groups do not have the characteristics necessary for the secretary to acknowledge them as existing as an Indian tribe and entitled to rights and services as such (emphasis mine).

This paragraph suggests a fundamental question: upon what principle is it desirable to establish criteria the application of which would exclude from acknowledgment some groups that reasonable laymen, professional anthropologists and the author of the paragraph would recognize as Indian? It is necessary to answer this question because it is not clear what sorts of groups this paragraph envisions. There are at least two possibilities.

1. It may envision special function groups, like religious clubs, social clubs, athletic teams or business firms. In many instances it may be reasonable to argue that groups such as

these, even if their memberships are composed entirely of persons of 100% Indian ancestry, should not be acknowledged as tribes because they do not possess any other general social characteristics of societies or coherent segments of societies, local or otherwise.*

2. A more specific form of the question is whether there are groups of Indians to which both laymen and anthropologists would not deny the status of society but which are being denied recognition by application of the criteria and/or the procedures used to assure compliance with the criteria?

a. If the answer is affirmative we ask "upon what principle is it reasonable, proper or desirable to establish criteria that will exclude from recognition some Indian societies?

b. One answer to this question is explicit two paragraphs after the passage cited. "The Department cannot administratively reverse legislation enacted by Congress." Whereas Congress's plenary power over Indian affairs is uncontestable, it needs to be recognized that in the instance at hand there results a situation in which some Indian societies otherwise indistinguishable by social criteria from eligible Indian societies are ineligible only because they were at one or another time terminated by congressional act. This disparity will, in some cases, constitute an apparent injustice, particularly in instances in which federal termination was an outcome of a unilateral government action or in which Indians were persuaded to make decisions upon inadequate, misleading or false information. Such situations of uninformed consent or unilateral actions require remedy. Inasmuch as administrative departments cannot override congressional acts, any remedy would entail congressional action.

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* Societies, of which "tribes" are a subclass, are biologically self-replicating and inter-generationally persisting associations of persons among whom interactions, in general, are governed by common sets of conventions which are, in turn, grounded in the assumptions, beliefs, usages and institutions constituting more or less distinctive cultures. They comprise elders as well as children and the age groups in-between. Special functions organizations, such as dancing and singing societies, or softball teams are certainly societal organizations, but not one of them can serve as the sole criterion to define a society or tribe.

c. Another answer to the question may be that the desire to deny recognition to fraudulent or fanciful applications is more compelling than the desire to accept worthy claims and to assure the former guidelines and procedures that might exclude legitimate Indian societies have been adopted. We are led back to I. above, which calls for a careful assessment of the reality of the problems of cheating, etc.

III. Specific Matters

Sections 54.1 to 54.9 raise several problematic questions for anthropologists who study American Indian societies.

54.1 Autonomy

(i). The definition of "autonomous" is very broad, as well it should be. All autonomous groups, American Indian and elsewhere throughout the world, do not necessarily have discrete "tribal councils" or other discrete "organizational mechanisms" for making tribal decisions. Indeed, at initial contacts with whites, political developments were very modest among most of the aboriginal societies of North America. Whether east or west of the Rocky Mountains, most indigenous societies were both autonomous and egalitarian (see especially Driver 1961, Jorgensen 1980 and 1987, and Tooker (ed.) 1983). It was rarely the case that political power which integrated more than one village, or even transcended the powers of kinship groups to manage their own affairs, was invested in chiefs or chiefs and their councils.

In some areas, such as the coasts of Washington, Oregon and northern California, the Columbia Plateau, the Great Basin, much of the southwestern region of the nation, much of central and southern California, and the coast and interior of Alaska residential kinship groups, alone, were recognized as sovereigns. Indeed, the simplest and numerically most common political organization in Alaska and all of western North America from the Rockies to the Pacific Coast was the residential kinship group that had no formal ties with any other group, even if several such kinship units lived side-by-side in the same community (see Driver and Massey 1957, Jorgensen 1980, 1987 [a copy of Jorgensen 1987 is attached, the other items are too bulky to submit]).

The issue of autonomy is most important, as the California example will demonstrate. At first European contact there were 500 or more autonomous aboriginal Indian communities in what is now California. In some of those societies there was no authority greater than the head of each household or clan in each community. In others a few men, either the leaders of religious sodalities, leaders of moieties, or the wealthiest men in the community were accorded nominal authority and their principal political instrument was suasion.

The question of how there came to be so many autonomous groups in California and throughout so much of North America will require comment below.

It should also be recognized, given the language of section 54.1.(i) which requires that tribal decisions are made independently of "the control of any other Indian governing entity", that group fission leading to newly autonomous entities was a key factor in indigenous political processes which led to the staggering number of autonomous societies in North America and undoubtedly restrained political developments. Among Salishan, Sahaptian, California Penutian, Uto-Aztecan, Tlingit, Yuman, Siouan, Algonkian and a host of other language families, growth of local communities led to fissioning and the migration of splinter segments away from the mother community. The new communities, although related to the communities from which they fissioned, were autonomous. Continuing possibilities of fission should, therefore, be allowed for in guidelines and their administration.

54.3 Scope

(a). This paragraph appears to be self-contradictory. There may be "ethnically and culturally identifiable" Indian groups which, for reasons beyond their control, may not have maintained a "substantially continuous tribal existence" and which have not "functioned as autonomous entities throughout history until the present." The reasons that lie beyond their control include, most importantly, actions of settlers, vigilantes, the United States and state governments. For the government to deny recognition to a group because previous actions or inactions of the governments have made it impossible for the group to comply with the guidelines is, in contemporary vernacular, a "Catch 22". This situation should be remedied, by legislation if necessary.

(c). This paragraph is unclear.

(d). This paragraph is problematic. As already mentioned in a discussion of autonomy, migration and group fission were the processes that account for the distribution of the hundreds of sovereign groups in North America at first contact with Europeans. Guidelines should allow for its occurrence. The proviso that acknowledgment may be allowed if it can be "clearly established that the group has functioned throughout history...as an autonomous Indian tribal entity" is important but ambiguous.

An example from societies in western North America will shed light on the ambiguity. Perhaps 200 Salishan speaking villages were located in a nearly continuous distribution from the northern Oregon coast in the south to the central British Columbian coast in the north, and from the San Juan Islands in the Strait of Juan de Fuca in the west throughout the Columbia and Fraser River plateaus in the east. Whereas the residents of these villages spoke Salishan languages, the language family comprised thirty-two (32) mutually unintelligible languages.

The distributions of the 32 languages were not random. Rather, adjacent villages tended to speak the same language or dialects of the same language. Villages that were separated from one another by two or more villages or by major mountain chains, usually spoke mutually unintelligible Salishan languages (Jorgensen 1969).

Whether or not the same language was spoken in adjacent villages, each village was autonomous. Moreover, within each village each extended family household was autonomous, even if three or four consanguineally related extended family households made up the entire composition of the village. Ranking men from each household in a multiple extended family household village met from time to time to inform one another of any plans that their households may have made to sponsor ceremonials, say, but no household leader had authority over the others nor did they jointly exercise authority for the village. Anthropologists refer to such villages as patridemes.[1] Mates were not selected from relatives closer than third cousins and seldom resided in the same community. In every generation members were exchanged among communities.

A crucial feature of Salishan organization was ownership of key strategic resource sites. Ownership and inheritance of such sites was vested in the extended family households--a residential kinship group. Access to resource sites was acquired through membership in a household. It is surely the case that as households acquired productive fishing stations, berry grounds, root grounds, bird nesting areas, deer runs, house sites and the like, that families grew in members through natural increase and that some males and their families splintered from the original household. Because of the stability, abundance and localization of extractable natural resources in the regions occupied by the Salishans at earliest contact, the fissioning and migrating groups sought new locales similar to the locales from which they migrated and in which adjustments would be relatively simple.

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[1] Patridemes are composed of cores of male kinsmen who are related bilaterally, their wives, and their unmarried daughters. A man usually acquires a wife from another village (referred to as "local exogamy") and brings her to rise in or near the household of his male relatives (father, paternal uncles, paternal grandfather and granduncles, brothers). Members of patrideme communities trace their descent bilaterally, through both the mother's family and the father's family. It was not uncommon for a woman to bring her husband to reside in her father's household if the woman had few brothers or if the household had bountiful resources. Bilaterality allowed for some flexibility of membership beyond the recruitment of wives.

The phenomenon of population growth within an autonomous extended family household that laid claim to property, the fissioning of 'daughter' groups that also laid claim to property (some remaining in the same village as the mother group if some sites were available nearby, and some migrating to more distant locales if sites were not available near the mother group), probably occurred time and time again. Dialectal and language differentiation proceeded as communication was cut-off. Political hegemony was not exercised by the mother group over the daughter groups to control resources, provide protection, allocate civic duties, punish crimes, distribute food in times of scarcity or wage raids of aggression. Each residential kinship group exercised sovereign control over its strategic resource base and any assistance it received from another residential kinship group was *ad hoc* and based on kinship sentiments, not political obligations or political allegiance.

The segmentary nature of tribal societies in aboriginal North America must be emphasized. The process of growth and fission accounts for the nearly continuous geographical distribution of the scores of Uto-Aztecan speaking communities throughout southern California and extending to the east in the shape of a fan across the Great Basin and its peripheries (Cupeno, Luiseno, Juaneno, Gabrielino, Cahuilla, Serrano, Tubatulabal, Kawaiisu, Mono, Northern Paiute, Shoshonean and Ute-Southern Paiute); the continuous geographical distribution of 50 Pomo villages speaking seven mutually unintelligible Pomon languages in vicinity of the Russian River region in California; the hundreds of continuously distributed California Penutian speaking communities (Maiduan, Wintun, Miwok-Costanoan, and Yokuts); the distributions of a clump of Athapaskan speaking communities of coastal California and a larger swatch of related speakers in the southwest; the Yuman speaking communities of southern California and the Colorado River and more.

Local segments of almost all of the communities in all of these language families were highly autonomous politically and thus could *always* have been considered "autonomous Indian tribal entities." To recognize a tribe that had previously been part of another (as far as federal recognition is concerned) would those other features of culture over which Indians have been able to exercise some protracted control in spite of their various political and economic predicaments.

(d). It should be understood that the statements describing governance procedures may impose unwarranted formality upon procedures previously very informal in nature. The word "describing" in this paragraph may be misleading. If investigation reveals that the description of procedures does not correspond to previous practice this should not be taken as misrepresentation.

(e). There are several real problems with membership criteria and it will take a few pages to describe them.

First, there will sometimes be a contradiction between "The tribe's own defined criteria" and "descendancy from a tribe which existed historically" as demonstrable "using evidence acceptable to the Secretary." Putting the Indian Reorganization Act of 1934 aside for the moment, a common feature of American Indian society was the "naturalization" of alien members. This was accomplished in several ways, but the most common was through intertribal marriages. Adoption was another means to acquire new members.

The vast majority of all North American Indian societies practiced either local exogamy or agamy (Driver and Massey, 1957, Jorgensen 1980). "Local exogamy" refers to the dominant practice of marrying someone from outside the community. "Local agamy" refers to the practice of finding a mate either within or outside the local community. No matter which custom dominated, new members were regularly recruited from different communities, and those communities were usually autonomous. The in-marrying spouse gradually became a member of the tribe as did, of course, the offspring of the union.

Even though provisions of the Indian Reorganization Act of 1934 (henceforth, IRA) allow Indian tribes to determine the criteria for membership and to maintain the rolls, intertribal and interracial marriages continue to be consummated. Intertribal and/or interracial marriages often, but not always, violate tribal membership rules as established via provisions in the IRA. In tribes in which intertribal or interracial marriages disallow enrollment of the offspring of the union, couples in which only one member is enrolled have gone to court to enroll their children in the tribe of the enrolled parent. Such has also been the case for couples in which each spouse is enrolled in a different tribe. These couples, too, have sought to enroll their children in the tribe of one parent (recent litigation of both kinds of cases on the Uintah and Ouray Northern Ute Reservation was resolved in favor of the children plaintiffs).

The pursuit of legal membership in a modern tribe is similar in many ways to the incorporation of in-marrying spouses among the Salishans: membership in the household provided access to resources, protection from attack, participation in ceremonial activities and the like.

It is evident to any anthropologist who has worked among American Indian societies that American Indians regularly assimilated persons who were not born into it, just as the United States "naturalizes" aliens, that is, turns them into citizens. In some instances provisions of the IRA have facilitated the establishing of membership criteria that did not exist prior to the IRA. In others they have facilitated the altering of the criteria employed by many Indian societies in the aboriginal period and in the period prior to ratification of the IRA. Nevertheless, the criteria established following the IRA have not stopped the practice of intertribal or interracial marriages. They have, however, stimulated legal challenges to those criteria in some instances.

Unlike many rules and regulations for tribal membership established by some Indian Reorganization Act governments, the United States does not have racial prerequisites for naturalization. In the past and even today, some Indian tribes did not or do not exclude the progeny of Non-Indian/Indian unions from assimilation. In sum, the two standards, tribal criteria on the one hand and evidence of Indian ancestry on the other may be in conflict. Yet the two standards themselves yield a further complexity when we assess Indian tribes prior to subjugation, after subjugation but prior to ratification of the IRA, and after ratification of the IRA. Much of the conflict may arise from provisions of the IRA and the intertribal competition for scarce federal funds. Other conflicts may arise from the discrepancy between pre-IRA standards and post-IRA standards for tribal membership.

Second, category of evidence number 54.7 (4), and by implication other of the categories, is ambiguous. What is required to be an Indian descendant of the tribe? If one great-grandparent was genotypically Indian will the standard be met? What about one great-great grandparent? Or does the term "Indian" here have socio-cultural meaning? That is, will a person be regarded as Indian if he or she lives in an Indian community or in an Indian way regardless of the proportion of his or her ancestry which was genotypically Indian? Adoption continues to be a common practice. Can an adoptee or an adoptee's progeny qualify as an Indian descendant of the tribe?

Third, and most fundamental, there are serious problems with the use of descent as a criterion under any circumstances. For one thing, descent was not uniformly significant culturally throughout aboriginal North America. At earliest European contact North American Indian societies were unique in the world for having so many in which descent reckoning was bilateral (descent traced equally on the mother's side and the father's side). The vast majority of North American Indian societies observed bilateral descent at contact (Driver and Massey 1957: 410).

Among bilaterally organized groups descent is more often insignificant than significant as a structural principle. Persons in bilateral descent societies are hardly more likely to know their ancestry beyond two degrees of lineality and collaterality (grandparental generation and second cousins) than are white Americans. Indeed, shallow descent reckoning is a hallmark of bilateral descent societies. This lack of knowledge of ancestry puts an unfair burden upon people who are forced to demonstrate their descent. But in addition, in many North American societies of the American West name taboos prohibited references to the names or to the persons on whom they were bestowed (as incorporeal property).

Because of a variety of reasons, then, petitioners could be forced to employ professional genealogists whose work may not be notable for accuracy and might be suspect when used forensically. The administrating agency then might feel compelled to check the accuracy of genealogical claims, an expensive, time-consuming procedure that might result in increased litigation as well as the denial of acknowledgment to worthy petitioners.

Furthermore, even among groups in which descent is an important organizing principle genealogists are not always accurate. As social instruments rather than descriptions of "historical fact" they are subject to frequent manipulation and more or less constant modification. Indeed, among some Melanesian groups (particularly in the New Guinea Highlands) the kinship terminological system worked in a way which could hide the evidence of "true ancestry." Among such peoples as the Narok and Mareng, for instance, local groups claim to be organized in terms of descent through males from a common male ancestor who emerged from the clan's land at the beginning of time--perhaps ten generations ago. Despite this strong agnatic ideology the circumstances of life were such that many men took up residence with their wives' or their mothers'natal groups. Among these New Guinean highland societies kinship terminological usage was such that after two generations there was no distinction between members of a group properly affiliated and those connected through a grandmother.[2] With shallow genealogical reckoning alien grandfathers were retrospectively assimilated into the local group while their local wives, through whom the men were actually connected were, retrospectively, transformed into in-married women.

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[2] Kinship terminology has been typologized to facilitate worldwide comparisons. Among the New Guinean societies in question siblings and parallel cousins (the children of mother's sister and father's brother) were addressed by the same term ('sibling') whereas cross cousins (the children of mother's brother and father's sister) were addressed by a different term ('cross cousin'). In the parental generation a person's father and father's brother were called 'father', mother and mother's sister were called 'mother', but separate terms were used for mother's brother and father's sister. For all descending generations (children-nephews and nieces; grandchildren-grandnephews and grandnieces, etc.) as well as for all ascending generations beyond the parental generation (grandparents and

Edward Cook thus discovered, by constructing an "actual" genealogy that in one "highly agnatic" local group of Narok speakers which had a core of about 40 adult men no one was "properly affiliated" if one went no further back than great-grandfathers.

Stipulated (asserted) descent is common among American Indian societies, both among those that reckon descent bilaterally and unilaterally. The requirement that "Indian descent," (whatever the percentage that entails) be demonstrated (reckoned consanguineally) when indigenously descent was often insignificant or merely stipulated (asserted) is ill-advised.[3]

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grandaunts and granduncles; great grandparents etc.) generational terms were applied to all relatives in a generation e.g., 'grandparent'.

[3] Among the Hopi villages of Arizona the matrilineal clans are especially important to ceremonial and subsistence practices. The Bear clan is attributed paramount importance in Hopi villages because of the particular ceremonial obligations that are thought to be vested in that clan by the gods. If there are no female members of the Bear clan to assume the position of Bear Clan Mother ('village mother') in one of the villages, they will seek to re-seed the clan with a Bear clan woman from another Hopi village. If there are no available Bear clan women in the other villages, they will seek to re-seed the clan with a woman from the phratry to which the Bear clan belongs (an unnamed group of clans to which the Bear clan has distant affinities). If there are no women available in the phratry, the Hopi have sought non-

The Senate Select Committee and the BIA is well-advised to simply agree to accept a tribe's own criteria for membership. If this leads to abuses deal with them as they arise.

IV. Some Issues in Acknowledgment

The Acknowledgment procedure could be expedited in several ways. One would be immediately to acknowledge all tribes that have treated with the United States but are not currently acknowledged. This would promote fairness while saving resources.

If the Acknowledgment Branch of the BIA is to continue with the responsibility for evaluating petitions, the number of anthropologists and historians assigned to it must surely be increased.

It would also facilitate speedier and fairer reviews to shift from criteria to assess political continuity to criteria for assessing cultural continuity. It is evident from the questions raised above that unwarranted and obfuscating criteria inhibit fair evaluation. Some, especially those that address political continuity and membership, foredoom petitioners to

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Hopi women to reseed the clan. The ceremonial ideology and the role that kinship plays within that ideology is more important that genealogical purity to the Hopi. "In the last analysis any woman--even a Navaho--can re-establish a clan household and maintain its activities in the absence of better claimants" (Eggan 1964: 179).

rejection.

All American Indian societies recognized space, that is, the territory in which they gained their livelihoods and were willing to defend, and all recognized places in which significant events occurred in their culture history. Those memories are alive today and serve as the bases for much of the analyses that anthropologists and ethnohistorians do. Ceremonial practices, including community rituals, dancing and singing, provide measures of continuity through regular gatherings. Voluntary contributions of food and labor to these ceremonies and travel expenses to attend or to assist others to do so are solid indicators of 'cultural continuity'.[4]

Economic practices, particularly the phenomenon of sharing resources, skills, labor, even income within large households, wider networks of kinspersons, and friends (in and out of the local community) is a quintessential feature of contemporary

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[4] The majority of the residents on the Soboba reservation in southern California, for example, were forced to abandon their homes in 1953 when the aquifers beneath their land were drained by the Metropolitan Water District and Soboba's wells dried up. Families moved to many separate locations in California from San Diego to San Francisco but returned--hauling water to do so--at least once between 1953 and 1978 to sponsor a Fiesta. During this same period Soboban people regularly attended Fiestas sponsored by southern California Indian communities which had not lost their water. They continued to marry within the tribe and also to seek mates from other Indian communities. In 1978 (a generation after the involuntary relocation) when Housing and Urban Development sunk a deep well and provided housing at Soboba, the Soboban people returned en bloc.

American Indian and Eskimo society which has its roots in egalitarian practices of the past. Households are open to membership for relatives and friends in need, or for the occasional but long term visitors. Indian communities pay heed to the needs of elders, and so forth.

It is a difficult task to try to separate economic practices from kinship obligations inasmuch as the two are complexly intertwined. Persons who reside in Indian communities beckon their kinspersons who have migrated to urban areas in quest of employment to return and contribute their skills and resources. Urban residents often remit funds when they can, and return to the Indian communities for life cycle events (births, naming ceremonies, marriages, death) and for major ceremonies. So even residence in an urban area should not preclude an Indian from membership in a tribe, or a tribe from recognition.[5]

It is reasonable to suggest that a rotating panel of anthropologists and ethnohistorians could assist the government in evaluating appeals about cultural persistence and membership that might be brought by unsuccessful petitioners, but a rewriting of the requirements for acknowledgment that jettisons the focus on political continuity and genealogical purity and stresses features of cultural persistences (ideology, ceremonial practices, kinship observations, interhousehold economic sharing practices, assertion of Indian identity) would better serve the nation and its unacknowledged Indian tribes.

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[5] From Joan Ablon's study in the late 1950s of American Indian relocatees to the San Francisco Bay area to recent investigations of the return migration of Skagit (Salishans), Soboba (Luiseno), Kansas Kickapoo and many other erstwhile urban residents, Indians who reside in urban areas predominantly choose to return to Indian communities and actually do so if employment or access to resources is available to facilitate their return.

Submitted by

Joseph G. Jorgensen

Testimony to United States Senate
Select Committee on Indian Affairs
Federal Acknowledgment of Indian Tribes
Joseph G. Jorgensen
May 16, 28

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PREPARED STATEMENT OF JANE L. WEEKS, EXECUTIVE DIRECTOR, ALABAMA INDIAN AFFAIRS COMMISSION

BACKGROUND

The Federal Acknowledgement program was created in response to the report of the American Indian Policy Review Commission, which criticized the procedures by which the national government had theretofore acknowledged the existence of Indian "tribal governments," which at the time of the report numbered 133.

In its particulars, the report criticized the apparently haphazard approach which both the legislative and executive branch had utilized in providing recognition to existing Indian tribes, which, for a variety of reasons had not reviewed acknowledgement by the federal government, and reported the existence of a large number of groups which apparently had a legitimate claim for recognition. In addition, it denounced the government for the policy which relegated these tribes to a status which, in turn, created a climate condemning them to over a century of abuse and discrimination.

Upon publication of the report of the AIPRC (1977), there was considerable opinion in the Congress for legislation creating a formal procedure for acknowledgement. The administration intervened in behalf of the position that authority for acknowledgement resided in the Department of the Interior and that additional legislation was not needed.

The administration prevailed in their contention that they possessed authority to perform the task of acknowledgement and issued regulations prescribing a process and establishing an administrative office within the Office of the Assistant Secretary of Indian Affairs to administer the acknowledgement program. This process incorporated, in most instances, the recommendation made by the AIPRC and the criteria articulated by Felix Cohen, former solicitor for the Deparatment of Interior, and author of the **Handbook of American Indian Law**. The process of developing the regulations was aided by the convening of a conference of Indian leaders representing both recognized and non-recognized groups in the country.

TEXT

My name is Jane Weeks and I am Executive Director of the Alabama Indian Affairs Commission. My reason for appearing before the Committee is to represent the seven American Indian tribes in Alabama and because all of these tribes have a direct interest in the policy of the government with regard to the Federal Acknowledgement Program. The Poarch Band of Creeks was recognized through the program in 1984. The MaChis Lower Creek Indian Tribe of Alabama has appealed a negative ruling of the

Assistant Secretary for Indian Affairs, and the MOWA Band of Choctaw Indians has recently presented the documentation for its petition and is awaiting the preliminary review and "obvious deficiency" phase of the acknowledgement process. The information in my office is that the other four Alabama tribes have submitted their letters of petition to the FAO. You can see, therefore, that the Alabama Indian Affairs Commission is very interested in seeing that the process is fair and equitable, and that it is done efficiently.

Despite the fact that the process developed as a result of the AIPRC report was an important step, we feel that things began to go wrong with the program almost immediately. Admittedly, the process of making a decision with regard to the authenticity of an Indian tribe is frought with perils of diverse sorts. There are those throughout the U.S. who have a vested interest in seeing that no Indian groups, no matter how valid their claim on the conscience of the Nation, be added to the roster of those Indians with whom the U.S. must conduct its affairs. In addition, there are those who have a conscientious political or philosophical aversion to the practice of Indian groups again becoming "dependent" for their future growth and development on the control of the national government. Finally, there are those groups and individuals of questionable Indian ancestry who would misuse the process in order to obtain ends of their own.

Against this background, it still must be said that portions of the adopted criteria are seriously flawed in light of the historical character of the Indian experience, especially as it applies to Indian groups which survived the colonial and early American period only by isolating themselves from contact with a power which was seeking to overwhelm the entire aboriginal population of their homeland.

Largely because of the policy and actions of the government of the United States and the several states, our Indian citizens continue to be presented with unique problems of discrimination which complicate any undertaking that they initiate. The mobility that was engendered by their early conflicts with colonial and United States authorities and the intrusions of land-hungry settlers into Indian lands, as well as the subhuman treatment of many of those Indians who remained in the southeast following removal of the majority of the Five Civilized Tribes to new lands west of the Mississippi, it is a shameful but arcane chapter in our nation's history. The shadows of these events haunt Native Americans who live in the southeast to this day.

Not the least of these problems is that of their very identity. It should be remembered that, beginning in the 1830s and continuing into the twentieth century, it was perilous to admit of an Indian identity in the face of the prospect of forced relocation to Indian Territory. Many of the Indians who avoided removal did so by retreating to isolated settlements which escaped the attention of Federal authorities directing its logistics. Others were forced or sold into slavery. Still others remained on marginal land and, because of the racial attitudes of their white neighbors, were racially reclassified, using perjorative terms such as "mulattoes," "mixed," or "persons of color." A few prosperous and other less prosperous "mixed bloods" or "half-breeds" who resembled their white neighbors melded into the dominant society of the time. Records of state and federal authorities following Indian removal offered rather disparate characterizations of the race of Indian people. The problems created by these characterizations continue to the present day. There are Indian families in whom natural children, both of whose parents are Indian, are listed on birth records as being of a different race than either parent, and among whom natural siblings may be enumerated as being of different races.

When these practices are seen against the larger backdrop of racial attitudes and policies of the antebellum south, the period of Reconstruction following the Civil War and the "Jim Crow" legislation which followed Reconstruction, the dilemma of the relatively small Indian population of the South is seen in sharp focus: many were relegated to the backwaters of racial politics; others identified with the race of their black or white ancestors and fought the racial battles inherent in that identification; in only a very few cases did either prosper.

When the questions of racial equity was first brought to the courtrooms and centers of government in the nation, the matter of the status of the extant population of American Indians in the eastern U.S. received short shrift; and despite the concerted efforts of Indian leaders and an occasionally sympathetic government official or lawmaker, they continue to suffer most decidedly the worst form of discrimination practiced; that being the unwillingness of their government and its agencies to acknowledge their Indian identity, thereby depriving them of the small protection and assistance deriving from the special relationship that treaties and other agreements between the national government and Indian tribes have provided.

The United States government must, without delay, move toward resolving the matter of recognition for the more than 130 Indian tribes identified by the American Indian Policy Review Commission in its 1977 report, as well as those which the AIPRC did not identify but have a legitimate claim to recognition. In the eleventh year since the AIPRC report was submitted to Congress, only approximately 13 tribes have recognized by the federal government. At this rate, it will require 100 years to complete the task of responding to all petitions submitted.

We ask the Committee to make it clear to the Congress that the recognition of the legitimate rights to these Indians must be considered a priority and efforts made to streamline the process. This might be done with the assistance of scholars who have a broad background in Indian history and the relationship between Indians and government at every level. The present Federal

Acknowledgement Office staff is too small, the process takes too long and is too costly. There are valid questions that need to be raised about the criteria developed by the Bureau of Indian Affairs that effectively discriminate to the disadvantage of tribes which inhabit the area east of the Mississippi. Among the most onerous of these criteria is that of documenting a formal tribal existence over an extended period of time. It is particularly difficult to document contacts with state, federal, and local government, when those very governments have refused to relate in any way to their Indian populations, even going to the extreme of enacting legislation forbidding the title of "chief" and the formation or operation of any Indian tribal government within the state. This has made the problem of documenting historical continuity very difficult.

These situations make it most difficult to develop a petition which meets all seven of the criteria. Particularly onerous are the following criteria which are listed and discussed below:

1. Longstanding relationships with State governments based identification of the group as Indian.

The principal instruments which State governments used to suppress any remaining Indian presence after the Removal Era were the laws disestablishing Indian tribal government, outlawing the use of the titles of tribal officials, and declaring Indian persons to be incompetent in their standing before State courts. These, and similar actions, effectively made the Indians "nonpersons" as they related to the State, and encouraged land speculators and corrupt officials to engage in practices of land piracy, abuse and even Indian slavery. So pervasive were these practices that, in the latter half of the nineteenth century, Ward Coachman, a mixed-blood Alabama Indian, returned to Alabama from Indian Territory and ransomed 65 Indian slaves but reported that he was unable to obtain freedom for more than 100 who remained in slavery. Compounding the problem for those Indians who remained was the fact that, although they had been assured by treaty that they could remain in the state of their origin and become citizens, pressures continued for their removal to the west, and agents continued to be dispatched to Louisiana, Alabama, Mississippi and Georgia with express instructions to locate and remove Indians to the western lands. Indians who identified themselves under these circumstances faced immediate removal from their ancestral homeland. Under these pressures, many Indian communities chose to remain isolated in their rural settings, eschewing their Indian identity in the face of this threat. These factors have resulted in the preservation of a very slim record of contacts with any agency of government, except when there was litigation between Indians and governmental agents, and these matters were their subject.

2. **Repeated dealings with a county, parish, or other local government in a relationship based on the group's Indian identity.**

Local governments have historically been the most repressive to Indian communities in the south. In the years following removal, they were dominated by land speculators and, in the agricultural south, by large plantation owners who saw any Indian presence as representing either an opportunity or a threat. Under these circumstances, it was advantageous to deny that any Indian possessed a valid claim to land in the locality. A natural extension of this premise was to maintain that the person advancing the claim was not an Indian, and since the Indian population was small and powerless, and since they had no tribal government or Indian agent to support them, claims were almost exclusively settled to their disadvantage.

3. A statement of fact which establishes that the petitioner has maintained tribal political influence of other authority over its members as an autonomous entity throughout history until the present.

This is no doubt the most onerous of all the criteria for those tribes which have escaped removal and were confronted with the pressures for disintegration that characterized the period that followed removal. As previously mentioned, the legislatures of most southeastern states enacted laws forbidding the existence of "Indian tribes" or "chiefs." These laws effectively prevented those Indian leaders wishing to relate to their own people to find alternate ways of establishing and maintaining some measure of decision-making and social control. In many instances, they used the Indian churches and schools for this purpose. Teachers and ministers, boards of deacons and informal meetings of elders made decisions effecting the community as a whole or relating to particular issues effecting portions of the tribe. These kinds of relationships are difficult to document, as early leaders and most of their tribe were illiterate; and they held little esteem for the white man's habit of reducing every thought to writing.

We would ask, then that the criteria receive the benefit of additional study in order to make them more realistic in light of the social history of the country, and particularly of the southeast.

We are concerned about the costs involved in researching a petition and the problem of obtaining qualified and purely objective researchers to perform it. We trust that the Congress will continue to insist that the Administration for Native Americans provide financial assistance to eligible state-recognized tribes to enable them to perform the research needed to document their petition for acknowledgement. We are concerned that this program, currently undergoing an assessment by ANA, might be eliminated. If the program is eliminated, many tribes will not have the financial resources needed to develop their documented petition, or will be delayed in their efforts to advance their cases because they must look to other, more limited means to do the needed research or attempt to undertake it themselves. Those tribes which have previously petitioned, and have had to do the research to document the petition without the aid of professional historians, anthropologists, and genealogists have, with no exception that I am familiar with, failed to gain acknowledgement. No tribe should be denied an opportunity to present a well-documented petition simply because they lack the ability to pay for it.

Because of low funding, consultants who proport to be skilled, knowledgable, and unbiased researchers contract to perform the research needed to document the petition. We are concerned that some of these researchers develop preconceived notions about the legitimacy of some Indian groups which prejudice their research. Such researchers become too closely associated with groups which compete with one another for recognition and lose their objectivity. We have seen instances of researchers who were given consulting contracts to examine the petition of Indian groups while also serving as consultants to competing groups. This should be guarded against.

In addition, there is a shortage of qualified ethnohistorians and genealogists who have a committment to Indian research. Most anthropologist do not see this area as one with a great deal of prestige and the incentives are not sufficient to attract young professionals to this kind of study. There are few practitioners of genealogy who know much about Indian history or the relevant records relating to it such that they may conduct the complex genealogical research needed to document Indian ancestry.

We would suggest that, in order to deal with this problem, there be developed a program to inform colleges and universities of the problem and the need for research committments in the area of federal acknowledgement, contemporary Indian culture, and Indian genealogy.

And finally, there are some matters that have to do with the FAO itself. There are occasions when it appears that the FAO staff use standards of proof that are even more rigorous than that of the discipline from which they derive. On the other hand, some of the reports seem to gloss over or broadly interpret criteria when there are external pressures brought to bear for recognition of a particular group; and it appears that these matters are more than simple differences in interpretation brought to the data by virtue of differences in perception and experience of the staff.

To correct this matter, we would suggest that tribes be given a real opportunity to appeal negative decisions, with sufficient time to prepare a response and present it. We disagree with the present policy of considering the process as if it were not a litigous one. In the present political climate, it is ludicrous to think that the Department of Interior is making solely objective decisions when the addition of any new tribal entity is likely to add millions of dollars to the Department's budget. We feel that objectivity could be added to the process if additional time could be made available during which to appeal a negataive decision and that a panel of specialists, unconnected in any way with the Department, be appointed to examine the evidence in the case of appeals. This would add a measure of objectivity to the process that would counter any claims of the petitioner that their case did not receive a fair hearing.

Thank you for your time and attention.

TESTIMONY OF JANIE LEASK

PRESIDENT, ALASKA FEDERATION OF NATIVES

before the

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

(Senator Daniel Inouye, Chairman)

(Submitted in writing on June 9, 1988, for the Committee's hearing record.)

Mr. Chairman and Members of the Committee:

My name is Janie Leask. I am the president of the Alaska Federation of Natives. I appreciate this opportunity to submit written testimony to the Senate Select Committee on Indian Affairs concerning the Federal Acknowledgement Process for Indian tribes, as it relates to Alaska Native villages.

The issue of federal acknowledgment of the eligibility for federal services of all Alaska Native villages has been pending for several years. In May, 1982, the Juneau Area Office of the Bureau of Indian Affairs submitted to the Deputy Assistant Secretary of the Interior for Indian Affairs, a recommended list of Native villages to be recognized as tribes eligible for BIA and other federal services, based upon various criteria: eligibility as village Native corporations under the Alaska Native Claims Settlement Act; village constitutional status under Section 16 of the Indian Reorganization Act of 1934; BIA recognition of Traditional Councils in non-IRA communities; and recognition, by Congressional statutes and/or administrative regulations and decisions, of eligibility for various tribal program fundings.

Most of the villages on that list were subsequently published in the Federal Register as Alaska Native communities eligible for tribal services. However, several were inadvertently left off, and no one has ever been able to discover why. Indeed, a Freedom of Information Act request filed by the Rural Alaska Community Action Program achieved the release of relevant administrative documents, and no pattern or formula could be discerned which would explain any difference between those villages included and those excluded. In a subsequent letter to RuralCap, dated April 15, 1988, Mr. William Ragsdale, Acting Assistant Secretary for Indian Affairs, acknowledged that the published list "may contain some administrative errors." The exclusions seem to have been inadvertent clerical oversights or are otherwise inexplicable.

On behalf of the Board of Directors and membership of the Alaska Federation of Natives, I strongly urge the Congress to take whatever steps are necessary to require the Secretary of Interior to add to his Federal Register list all communities originally recommended by the Bureau of Indian Affairs Juneau Area Office. The criteria by which those original recommendations were made by the BIA seem eminently reasonable. Moreover, they provide an excellent formula for judging the eligibility of any additional Native village which may apply for acknowledgment of its federal tribal eligibility in the future. I add this point because it is entirely possible that even the original list submitted by the BIA Juneau Area Office was incomplete. If other villages, not included in the JAO recommendation of 1982, should apply for recognition and should meet those criteria, the AFN strongly recommends that they also be included.

At a minimum, we feel that a Native village should be included on the Federal Register list if it demonstrates any one or more of the following organizational characteristics:

1. It has been certified as a village Native corporation, urban Native corporation (Kodiak, Kenai, Sitka, Juneau) or group corporation under the Alaska Native Claims Settlement Act of 1971;
2. it is organized under Section 16 of the Indian Reorganization Act;
3. it has a BIA-recognized Traditional Council; or
4. it has been defined as eligible for tribal services and programs in other Congressional Acts or has received tribally-defined services from federal agencies in the past.

Before I close, I wish to clarify one additional point. There is a general sense among many Alaska Natives that the Department of the Interior may be reluctant to open up the Federal Register list and to add communities because of the difficult and as yet unresolved issue of the extent of tribal sovereignty in Alaska. As the Committee well knows, the question of tribal powers in Alaska Native villages remains one of the most complex political and legal questions in this state. Opinions on the question vary widely and are passionately debated. Eventually these issues will be resolved by actions of the Congress and/or decisions of the Federal courts in the future. Regardless of the outcome, there is no sound reason in policy or logic for continuing to differentiate between the listed villages and the over 30 villages inadvertently omitted from the list.

What is at stake here is a simple question of equity among very similar, if not identical, Native villages. In that spirit, the Alaska Federation of Natives respectfully recommends the inclusion of all villages which were left off the list and that administrative regulations be adopted establishing the criteria endorsed above for considering any future application of a village for inclusion.

I thank the Committee for this opportunity to testify. The AFN will be happy to provide any additional information on the subject.

STATEMENT OF CHAIRMAN
KIRBY VERRET
UNITED HOUMA NATION, INC.

Introduction

Mr. Chairman, I appreciate this opportunity to submit the following written testimony on behalf of the United Houma Nation, Inc. I understand it will be included as part of the final written record on the Federal Acknowledgment Oversight Hearing. Although the Senate Select Committee on Indian Affairs was unable to fulfill our request to appear in person, we do appreciate this opportunity to inform you of our views.

The United Houma Nation, Inc., our governing body, represents over 10,000 Houma tribal members. We have a chairman (myself), a vice-chair and a governing tribal council. The majority of our tribal members live in southeastern Louisiana in the parishes of Jefferson, LaFourche, St. Bernard, St. Mary and Terrebonne, at the lower end of the bayous flowing to the Gulf of Mexico. Our tribal offices are located at Golden Meadow, Louisiana.

We are one of the largest petitioning tribes in the nation. By becoming federally recognized we see an opportunity to become self-sufficient. For too long in the State of Louisiana, the Houmas have been left out of the social, economic, and educational arenas. We have an incredible amount of work to do to catch-up. Quite honestly, our only way to achieve equality is through federal recognition.

Background on Petition

We filed our recognition petition on July 18, 1985, but had actually begun our research seven years before. For the first few years we received help from researchers and church groups who donated their time on our behalf. Then in 1981 the Native American Rights Fund became our lawyers for the purpose of helping us prepare our petition. They are currently our legal counsel.

A comprehensive petition requires a substantial amount of work. The Houma petition is three inches thick. Our response to the Branch of Acknowledgment and Research's (BAR) second obvious deficiency letter is 70 pages in length. We have also provided to the BAR 10 boxes of our membership rolls and genealogies. Finally, we prepared large-scale maps showing the inter-relationships between our communities. Without any one of these items our petition would be incomplete. This shows you the enormous amount of work involved, let alone the enormous expense.

When we originally filed our petition in 1985, we were told in writing by the BAR that our petition would be reviewed by April 1986, and a letter of obvious deficiency, if appropriate, would be issued within that time-frame. Instead, we waited close to two years before we received a final obvious deficiency letter from the BAR. Because the questions presented in the BAR letter required further clarification, this meant more meetings between all parties. In order to respond to the second obvious deficiency letter, it took an additional 30 days of field research by two anthropologists just to respond to the BAR's question of "community," then two weeks to write the findings. We estimate it required an extra $11,000 to answer the second obvious deficiency letter. We finally submitted our response this past March, 1988.

We are now waiting. An optimistic estimate given to us by the BAR anticipates that they may review our response in late summer, then it may take possibly up to four-and-a-half years before our petition even reaches active status. Once our petition reaches active status, then the regulations require one year before a final determination, and even that can be extended. We are looking at a process from start to finish of at least nine years, probably more. I do not think our situation is unique.

Recommendations

Due to our situation, we wish to share with you some of our comments about the process and ways of improving it. In many respects our petition is a basic one. For this reason, our case may be useful to illustrate what happens or does not happen during the petitioning process. I offer the following four areas for comment.

Lack of Timely Processing of the Petition for Recognition

Our first concern relates to the excessive time taken by the BAR to review petitions for recognition. We understand from the BAR that they are able to process only one or two petitions per year. We understand that because of this, and because we are supposed to wait our turn, that we have a long time ahead of us. This should not be so. The only time deadline required in the recognition regulations is that once a petition reaches active status, a response must be forthcoming within one year. That is the only reference to time.

We recommend that deadlines be built into the system as soon as a petition is filed, not when it reaches active status. Therefore, the petitioning tribes will know the time-frame required and be able to plan accordingly. Also, with built-in time-frames, maybe this will push the BAR review in a more time-efficient manner.

Lack of Adequate BAR Staff and Funding

Our second concern is the lack of resources provided to the BAR to fund the office and staff. Maybe money cannot solve everything, but I believe it can help a great deal. The BAR staff cannot continue to operate with its limited staff and budget. The lack of timely review of the acknowledgment petitions is directly tied to the few persons able to physically do the work.

We recommend that this Committee make funding of the BAR a priority so it may accomplish its objectives. Tripling the office staff would be a good starting point.

The Lack of Continued ANA Funding and Coordination with BIA

Our third area of concern is the Administration for Native Americans (ANA) funding that non-recognized tribes receive in order to prepare their petitions. We are very fortunate to have had funding from ANA in the past. If it had not been for ANA, we would have been unable to finish our petition. Even though the paperwork is in, at least for now, we are worried we will lose our ANA funding in light of untimely review by the BAR. Our ANA funding has been the sole financial source for us to hire staff and to establish an office to work with the BAR, our experts, and our attorney. Without our ANA-funded staff we would be unable to respond to their inquiries and requests for information. We have so few, if any, tribal resources.

We recommend that ANA funding be tied to the BIA review of our petition. For example, now that we have submitted our petition, we may wait years before it goes on active status, or possibly as little as a few months. In either case, the timing does not correspond to our funding cycle. We should not be prejudiced by the BIA's delay, yet at the same time, ANA should be made aware of our predicament as well.

Lack of Definition of "Community"

Our final issue is our most important, because it nearly jeopardized our petition. A common problem we encountered was trying to determine what information to provide and how much. This became especially clear in terms of believing we had adequately addressed the issue of "community," but in fact had not.

The first obvious deficiency letter sent to us predetermined we were not "Indians." The purpose of the petitioning process in our view is to present our documentation to the BAR first, have it evaluated, then we respond to those "obvious" areas we have overlooked. In our case, however, our petition was prematurely and erroneously predetermined, which undercut the fairness of the review. This gross prejudgment of our status prompted meetings with the BAR staff to withdraw their first letter, which they did at our insistence.

When we received our second obvious deficiency letter, the BAR asked us to prepare an "ethnographic report" to prove we were a community. We did this at considerable expense. As I described before, we estimate it cost us $11,000 to respond to the second obvious deficiency letter. Had the BAR been more specific as to their request we may not have had to undergo that added burden. Because we are a big tribe it was not an easy task to choose representative families to complete the ethnographic report. Fortunately, our ANA funds allowed us to do the required work necessary to respond in such a thorough manner. In any case, this is an example of the lack of a standard definition and the practical problems it poses to a petitioning tribe.

If our situation is used as precedent, then every petitioner following us will also be required to do an "ethnographic report." We understand, however, that the BAR in later obvious deficiency letters has not required the degree of detail that we had to undergo. These shifting standards undermine the credibility of the process and burden petitioning tribes with more research and more money being spent. It also prejudices our claims when unqualified prejudgments are made.

Conclusion

These are just a few of our concerns at this time. We heartily endorse the work of the Branch of Acknowledgment and Research, but we encourage this Committee to seek ways of making the petitioning process a fairer and more time-efficient procedure.

TESTIMONY TO THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS CONCERNING THE FEDERAL ACKNOWLEDGMENT PROCESS

By Jack Campisi
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INTRODUCTION

Over the course of the ten years since the promulgation of the rules governing the recognition process, I have participated in the preparation of sixteen petitions. In some cases I have researched and written the historical sections; for others, I have prepared the sections dealing with the contemporary community and political continuity. In some instances, I have taken the archival research done by others and written a petition, providing additional research to fill gaps in the data. In addition, I have reviewed petitions prepared by others, providing the petitioners with an evaluation of the works and recommendations for their improvement. Finally, I have participated in a number of meetings, conferences and studies related to various phases of the federal acknowledgment process. These activities are summarized below.

1977-1988	Mashpee Wampanoag Tribe. Mashpee, Massachusetts. Preparation of petition.
1979-1982	Narragansett Tribe of Indians. Caroline, Rhode Island. Historical and ethnographic research.
1980-1986	Mashantucket Pequot. Ledyard, Connecticut. Preparation of petition, historical and ethnographic research.
1981	Western Abenaki Tribe. Swanton, Vermont. Review of petition.
1982-1987	Gay Head Wampanoag Tribe. Gay Head, Massachusetts. Preparation of petition, response to OD letter, response to negative preliminary findings.
1982-1987	Lumbeee Tribe of North Carolina. Pembroke, North Carolina. Preparation of petition, ethnographic research.
1983-1986	Eastern Paucatuck Tribe. Mystic, Connecticut. Histroical and genealogical research.
1983-1988	United Houma Nation. Golden Meadow, Louisiana. Preparation of petition, ethnographic research, response to OD letter.
1984	Branch of Acknowledgment and Research. Conference to review regulations governing federal acknowledgment.
1985-1986	Haliwa-Saponi Tribe. Hollister, North Carolina. Ethnographic research.
1985-1987	Little Shell Band of Chippewa. Havre, Montana. Ethnographic research on the contemporary community in response to OD letter.
1986-1987	Brotherton Tribe. Fond du Lac, Wisconsin.

	Preparation of petition, ethnographic research on contemporary community.
1986,1988	Aroostook Band of Micmac. Presque Isle, Maine. Review of petition, ethnographic research on contemporary community.
1987-1988	Schaghticoke Tribe. Historical and ethnographic research.
1987-1988	The Native Alaskan communities of Copper Center, Venetie, and Arctic Village. Alaska. Historical research.
1988	Shinnecock Indian Tribe. Southhampton, N.Y. Historical and ethnographic research.
1988	Florida Tribe of Eastern Creek. Bruce, Florida. Historical and ethnographic research.
1988	Study of the impact of Administration for Native Americans' funding on non-recognized tribes. Research consultant under contract to Orbis Associates, Washington, D.C.

Based on nearly a decade of close observation and involvement with the acknowledgment process, I have come to a number of conclusions on its operation and have formulated a number of suggestions for its improvement which I will articulate in the following sections.

GENERAL OBSERVATIONS

When the regulations were first conceived in the mid 1970s they were envisioned by one of the principal authors, John A. Shapard, Jr., the former chief of the Branch of Acknowledgment and Research (BAR), as a fairly simple process, one that could be handled by a petitioning group with little or no outside involvement or additional expertise. A petition, as described by the BAR staff in 1979, was to contain six parts: an introduction stating its purpose; the name of the petitioning group, and the names of the individuals authorized to act on behalf of the group; an historical overview; a description of the group; a response to the seven criteria; a list of sources; and, finally, a section containing all those documents submitted in support of the petition. Of the seven required criteria, four, in particular, demanded considerable substantative work. Here the group is required to show that it "... has been identified from historical times until the present on a substantially continuous basis, as 'American Indian,' or 'aboriginal.'" In addition, the group has to demonstrate that its members constitute an Indian community separate from other populations in the area, and one descended from "an Indian tribe which historically inhabited a specific area," that this community has maintained "influence or other authority" over its members as an autonomous entity throughout history, and proof that the members of the group can trace descendency from a known tribe or tribes. In addition, the petitioner is urged to present a narrative tracing the group's history from "early times until the present ... in as much detail as the petitioner feels is necessary." A tall order, indeed!

After a "documented" petition has been received, the Assistant Secretary is required to notify the petitioner of any obvious problems with the petition, and to afford the petitioner the opportunity to withdraw the petition or correct the defects. This notice is generally called "A Letter of Obvious Deficiencies or Significant Omissions," OD letter, for short. The petitioner then has whatever time it requires to respond to this letter, after which the petition awaits an opening in the recognition process in order to go on active status. The BAR has one year to complete its review and issue a preliminary finding, although its review period may be extended an additional 180 days. The petitioner and other interested parties then have 120 days to respond, after which the BAR makes its final determination. In practice, these time constraints are somewhat flexible.

By 1984, the BAR had completed nine petitions, finding favorably in six cases. However, the crescendo of complaints from petitioners and congressmen soon placed the BAR in an untenable position. On the one hand, it was under pressure to speed up the process while, on the other, administration budget cuts made a speed-up impossible. Added to this were staff changes, delays in replacing lost staff, and an expanding workload. To further complicate matters, the branch appeared to have little effective status within the federal bureaucracy and virtually none outside. As a result, there were the usual oversight hearings, conferences and retreats, all meant to seek remedies for a program that demanded too much of too few. Furthermore, because of complaints and threats of lawsuits, the staff members became increasingly concerned that the data submitted unequivocally supported their position. Close calls became harder calls to make.

A consequence of all this has been an elevation of what is required to gain acknowledgment, and this, in turn, has significantly increased the workload and costs for the petitioners. It has also extended the time necessary for review. This has led to different treatments for different petitioners depending upon the membership of the BAR review team, and the training, experience, and length of service of each member with the branch. The change in standards has been, to a large degree, ideosyncratic.

SPECIFIC PROBLEMS

The first, and probably most significant question that arises when preparing a petition is; what constitutes sufficient evidence to carry the argument that a particular group meets the criteria? I would argue that since the BAR completed its first reviews there has been a steady increase in the amount of data needed to sustain a group's contention. The question that needs a clear, unambiguous response is: What is the nature of the burden borne by a petitioner? Must it prove its case beyond a shadow of a doubt, to a certainty, or merely by a preponderance of the evidence, that is, with more evidence in favor than against?

The case of the first Houma OD letter will illustrate the problem. In that letter the BAR questioned the existence of the Houmas, both as Indians and as a tribe, based on a feature article from a New Orleans newspaper. This was in the face of overwhelming evidence from anthropologists that the Houmas were an Indian tribe, evidence that covered more than eighty years of their history. Faced with this unreasonable standard of proof the researcher finds himself or herself in a dilemma. It would be difficult to find a single petitioning group that had not had negative comments written about it, that had not been declared out of existence by some local historian, had not had reported the discovery or death of its last "genuine Indian member" by some eager anthropologist, had not had its origins and Indianness questioned by some social scientist, or had not been subjected to racial slurs by local authorities and in local newspapers. Yet, without knowing the weight to be placed upon such material, how can the researcher and the petitioner possibly have any assurance that if they include the material in the petition, it will be understood and judged in its appropriate context and along with all the other materials presented?

There is yet another dimension to this "burden of proof" issue. Suppose, for a moment, that a group has managed to establish its existence throughout the eighteenth and the first half of the nineteenth century, but from that point on no records exist. Applying the principle that continuous existence means providing proof from generation to generation, the group would fail to be recognized. Now assume that the same group can demonstrate existence at some later time, say from 1930 on. According to the BAR, the temporal gap in the documentation would still be fatal. This is illogical and patently unfair. Anthropologists do not believe that groups come and go, in and out of existence. In all cases the principal source of evidence comes from the records kept by the dominant society. Depositories have been destroyed by fire and flood, records are eaten by vermin and intentionally destroyed by individuals. Why should a petitioner be punished by the failure of the custodian of the records to take diligent care?

A second question relates to comparability. As applied here it means that petitioners need only meet the standard of evidence met in successful cases. The two criteria where the impact of such an approach (or lack of it) is most telling are criteria (b) and (c) -- community and political continuity. Since the BAR has consistently refused to provide meaningful and consistent guidelines, deciding what constitutes a sufficient description of a contemporary community and its political process can only be determined by studying what has been acceptable in prior cases. The BAR staff do not agree with this argument. They take the position that each case is unique and therefore, must be viewed in isolation from other cases. I think this is wrong.

The use of the comparative method is basic to not only anthropological research, but also to law. To argue that comparison is not possible is to assert a nullity; it is to void (or avoid) standards. Surely those who review petitions have some standard in mind by which to judge whether or not there is sufficient data to support a finding. They must have some idea of how the various sociocultural activities of a group influence their decision; how they are weighted. Unless they do, they would be guilty of making determinations without agreed-upon standards. If standards exist, surely the petitioners should be made aware of them before they submit a petition, and furthermore, they should be assured that the standards will not change without their being informed, or after they have submitted their petitions.

It is one thing to tell a group that it must prove that it is a community; it is quite another matter to carry this out. At some point the researcher must operationalize the criterion, and if no guides are provided, the only avenue left is to base research on the standards that appear in successful and unsuccessful petitions. It is patently unfair to require that one petitioner provide an ethnographic study to support the existence of a community when another, similar petitioner is not required to do the same. This suggests that there is no agreed upon standard operative within the BAR, and that, in turn, raises the obvious question of objectivity.

A final problem requires independent evidence of two related factors: the existence of community and the presence of political authority exercised by the community over its members. From an anthropological point of view a community cannot exist without internal organization, rules of social order and the exercise of political authority. However, the way the regulations are written, the petitioner is required to treat these as independent of each other. While it is difficult to demonstrate community through all time, it is infinitely more difficult to show examples of political authority being exercised by members of the community. Overt attempts at political activities by Indian communities were generally suppressed or ignored by state and local officials. Commonly, leadership in Indian communities was (and is) represented by the heads of the families and was (and is) informally organized. The types of data that support a favorable finding were seldom recorded by the members of the community or outsiders. Yet, it is fair to assume that if a community existed, it could only do so because there was political authority being exercised within it.

The way in which the federal acknowledgment process has developed over the ten years since its creation has resulted in the petitioning groups bearing a burden of proof that was difficult to begin with, and has since grown considerably in weight and complexity. It is a burden that many federally recognized tribes could not shoulder, if they were asked. I wish to offer a number of recommendations to make the burden more equitable.

RECOMMENDATIONS

One of the most crucial parts of any group's submission for federal acknowledgment is criterion (b):

> Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which historically inhabited a specific area.

There are serious problems with this criterion. First, the BAR has not provided any operationalized definition of the term community. Community, according to the regulations, means "... any people living within such a reasonable proximity as to allow group interaction and a maintenance of tribal relations." The absence of specific guidelines regarding what constitutes sufficient evidence to satisfy this vague statement leaves petitioners without direction and at a loss as to how to meet the criterion. In the case of the United Houma Nation, Inc., the Native American Rights Fund (NARF) spent an additional $11,000 on a detailed description of the community because the BAR, in its letter of obvious deficiencies, requested an ethnographic report on the contemporary community. I might point out that as far as I can determine, this is the only instance where such a report was requested, although a number of petitions similar to Houma were at the same time being reviewed by the BAR.

A second problem with the criterion relates to the issue of the members being "... descendants of an Indian tribe which historically inhabited a specific area." Criterion (e) provides that "[t]he membership must consist of individuals who have established, using evidence acceptable to the Secretary, descendancy from a tribe which existed historically or from historical tribes tribes which combined and functioned as a single autonomous entity." Clearly, there is an inconsistency between the two criteria; one requiring the membership to be from a single tribe and the other permitting the tribe to consist of individuals descended from a number of tribes. While the requirement that a tribe's members be able to trace descent from a single entity might be appropriate for some tribes in the United States, even a casual review of the history of Indian-white relations makes it clear that many tribes are the product of government policy. Many groups represent forced amalgamations of diverse Indian people, often of different linguistic, cultural and geographical backgrounds. Along the eastern seaboard, in particular, it is often difficult to determine the origins of specific Indian communities because their antecedent tribes were decimated before any significant record could be made of their culture. Since contact between Europeans and native peoples dates back to the sixteenth century, this is clearly an unreasonable demand to place on the groups, especially since many have been recognized as Indian communities by anthropologists, government officials, and local populations for well over a century.

These two fundamental problems could be eliminated if the BAR would provide a reasonable and theoretically sound operational definition of what constitutes a community, one that affords clear and consistent parameters; and second, if the BAR changed the language of criterion (b) to read, " ... descendants of an Indian tribe _or_ _tribes_ which historically inhabited a specific area _or_ _areas_."

The more significant problem of defining community could be alleviated by revising the branch's publication entitled _Guidelines For Preparing A Petition For Federal Acknowledgment As An Indian Tribe_, and adding the following paragraph:

> The description of the contemporary community must demonstrate the existence of a network of social interaction among tribal members. The amount of data necessary to demonstrate the network may vary depending upon the size of the group, the geographic isolation and/or proximity of group members, the number and character of social institutions, and the opportunities for interaction.

There is an even more significant problem imbedded in the criterion. This is the implication that the petitioner must demonstrate the community's continuous existence; that is, from "generation to generation." As matters are being interpreted now, this means that a historical gap greater than a generation, or approximately thirty years, is suspect. The regulations define historical as "dating back to the earliest documented contact," forcing the conclusion that if a tribe was casually contacted by a Spanish explorer in the sixteenth century, this is when the clock starts. Petitioning groups with limited resources have spent tens of thousands of dollars trying to fill meaningless seventeenth and eighteenth century historical gaps, scouring colonial documents, and miles of newsprint and microfilms, and chasing down elusive family ties, all in an attempt to show the existence of community and Indian ancestry which later documents make abundantly explicit. The exercise is unnecessary. I suggest that once an Indian community is demonstrated, in a reasonable fashion, to have existed at two different times in history, the group deserves the presumption that it continued to exist between those times, absent proof to the contrary. It must be borne in mind that in some states Indians were simply legislated out of existence during the nineteenth century. In other instances they were assumed by the dominant, often racist society, to no longer exist, and so treated in official records. The presumption of continued existence is a reasonable adjustment to make to the regulations, one that will simplify the research and reduce its growing costs.

To remedy this, I recommend that the definitions in Section 83.1(l) and 83.1(m) be changed to read:

> (l) "Historically", "historical" or "history" means dating to the earliest time of sustained contact between the aboriginal

> tribe or tribes from which the petitioners descended and a permanent, non-Indian settlement, whether established under foreign, colonial, territorial or United States' authority.
>
> (m) "Continuously" means extending from generation to generation throughout the tribe's history essentially without interruption, except that where the group demonstrates a fact or status at one point in time and at a later point in time, continuity of that fact or status will be presumed for the intervening period, absent proof to the contrary.

Criterion (c) also requires some modification. It reads as follows:

> (c) A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as an autonomous entitiy throughout history until the present.

The proposed changes in the definitions go a long way to resolving problems inherent in this criterion, but they do not go far enough. Consider the problems faced by some petitioners in maintaining tribal identity in the nineteenth and for most of the twentieth centuries. Some states had policies and laws that amounted to cultural genocide. For example, in 1834, North Carolina changed its constitution lumping Indians with free blacks into a single category -- free persons of color. It then proceeded to enact laws restricting the activities and rights of the people so categorized. Under these conditions one can hardly expect to find records showing the persistence of Indian enclaves, or the expression of Indian identity, much less the overt exercise of political autonomy. In another example, Florida, in 1853, passed legislation which required the deportation of Indians to the Oklahoma Territory. Can one seriously expect to find documents describing Indian leadership in states which had legislated Indians out of existence? Nor are these states the exceptions. In general, the treatment afforded Indian communities makes it very unlikely that there will be any significant evidence of leadership, although, paradoxically, there is often evidence of the existence of Indian communities.

It is reasonable to assume that if there exists evidence of an established community over some period of time, that community must have maintained some political authority or influence over its members. I can find no example in the anthropological literature of the existence of a community without the concomitant presence of rules and the means for their enforcement. Therefore, I would recommend the following change:

> (c) A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as an autonomous entity continuously from historical times to present. Political influence at any point in time can be demonstrated by proof that the petitioning group constituted a distinct community

at that time.

These changes, if enacted, will go a long way toward simplfying the process and reducing the cost to both the petitioners and the federal government, but they will not speed the process. To do that will require better petitions and more staff to review them. As others have pointed out, the process desperately needs to be speeded up. The BAR has been starved for staff, and until an adequate number of competent individuals is added, there can be no relief. A tribe which submits a petition can now expect it to take a year or more just to reach the stage of a letter of obvious deficiency. It generally takes a year or more to respond to the letter, primarily because of funding problems and the difficulty of finding adequate professional help. Once the response is filed, the group can look forward to another year of waiting before the BAR staff determines if the reponse is adequate. After that, it can take as long as five years before the petition is reviewed. In the interim, the data on the contemporary community becomes stale, and those who have assisted the petitioner are, more often than not, no longer available to respond to the BAR's inevitable requests for more information and explanation. To ask a tribe to wait eight to ten years for a response is not only unconscionable, but irresponsible. The BAR staff should be increased at least four-fold, and funds should be provided to petitioning groups to assist them in completing petitions.

SUMMARY OF RECOMMENDED CHANGES

Present	Proposed
Section 83.1(l) "Historically", "historical" or "history" means dating back to the earliest documented contact between the aboriginal tribe from which the petitioners descended and citizens or officials of the United States, colonial or territorial governments, or if relevant, citizens or officials of foreign governments from which the United States acquired territory.	"Historically", "historical" or "history" means dating back to the earliest time of sustained contact between the aboriginal tribe or tribes from which the petitioners descended and a permanent, non-Indian settlement, whether established under foreign, colonial, territorial or United States' authority.
Section 83.1(m) "Continuously" means extending from generation to generation throughout the tribe's history essentially without interruption.	"Continuously" means extending from generation to generation throughout the tribe's history essentially without interruption, except that where the group demonstrates a fact or status at one point in time and at a later point in time, continuity of that fact or status will be presumed for the intervening period, absent proof to the contrary.
Section 83.7 (opening paragraph) The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge tribal existence. All the criteria in paragraphs (a)-(g) of this section are mandatory in order for tribal existence to be acknowledged and must be included in the petition.	(opening paragraph) The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge tribal existence. All the criteria in paragraphs (a) through (g) of this section must be demonstrated in order for tribal existence to be acknowledged and must be included in the petition. For purposes of this section, a criterion is deemed demonstrated if the petitioning group shows it to be more likely true than not.
Section 83.7(b) Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a	Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a com-

community viewed as American Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which historically inhabited a specific area.	munity viewed as American Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe or tribes which historically inhabited a specific area or areas.
Section 83.7(c) A statement of facts which establishes that the petitioner has maintained tribal influence or other authority over its members as an autonomous entity throughout history until the present.	A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as an autonomous entity continuously from historical time to present. Political influence at any point in time can be demonstrated by proof that the petitioning group constituted a distinct community at that time.

To be added to the Gidelines For Preparing A Petition For Federal Acknowledgment As An Indian Tribe

The description of the contemporary community must demonstrate the existence of a network of social interaction among tribal members. The amount of data necessary to demonstrate the network may vary depending upon the size of the group, the degree of geographic isolation and/or proximity of group members, the number and character of social institutions, and the opportuntiies for interaction.

A SHORT HISTORY OF THE SNOQUALMIE INDIANS AND U.S. RELATIONSHIPS

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Washington State historians have portrayed the Snoqualmie Indians as one of the most powerful tribes in Western Washington. Grant (1891:58) indicates that the head chief of the Snoqualmie, Pat Kanin, was the "most powerful Indian on the Sound." Meeker (1905:269, 278) explains that Chief Pat Kanin "domineered over the weaker bands as no other chief dared" and that the Snoqualmie were "the most warlike tribe of all the Indians within the western limits of the territory...ruling with an iron hand."

Gibbs (1877:179-180), an eye witness historian of the Point Elliott Treat of 1855, states that "the Snohomish were under the jurisdiction of the Snoqualmie and Chief Pat Kanin's leadership." Whitfield (1926:841) explains that had Chief Pat Kanin served as "spokesman for the Snohomish Tribe at the treaty council" and contends that the four head chiefs who signed the Point Elliott Treaty possesssed the authority to "sign for their own and allied tribes" because they were "rulers of all tribes for whom they signed." Bagley (1929:164) adds that the Snoqualmie and Snohomish tribes were allied under the leadership of Chief Pat Kanin "who terrorized over the smaller and weaker tribes living in the vicinity."

The political influence of chief Pat Kanin is evidenced by a large gathering that he hosted in 1848 on Whidbey Island. Bancroft (1890:11) refers to a large "council of tribes of the Sound" numbering several thousand, "8,000," who gathered to consider the expulsion of whites from Western Washington. Nevertheless, the council failed to achieve a consensus when one of the ranking chiefs spoke against a united attack on his white settler friends.

Chief Pat Kanin eventually made his peace, about 1850, with the whites and joined forces with the early settlers. Chief Kanin reportedly came to respect the law and power of the territorial government as evidenced by his warning of the settlers of a pending Indian raid (Denny, 1908:58).

Grant (1891:104) attests to the friendship and fidelity of the Snoqualmie. Pat Kanin, with 55 well armed warriors, accompanied a group of whites up the Snoqualmie River, surprised a hostile camp of Indians, tried two men who had participated in the White River "massacre," and hanged the men (Simmons, October 1, 1856).

During the late 1850s, greedy settlers drove the Snoqualmie out of their villages and took possession of their lands years before Congress ratified the Point Elliott Treaty in 1859. Watson Martin (Oct. 28, 1926) describes how white settlers forced the Snoqualmie out of their villages, burned their community longhouses, and drove them away in order to acquire possession of their village and the surrounding clearings.

Following the loss of their land, the Snoqualmie were stunned and "just tramped around." Watson Martin (1933:179) explains, "We didn't know where to go." Some Snoqualmie went east of the mountains and joined other tribes, some relocated near white settlers and logged or cleared land for them, some moved to over-crowded reservations, but most stayed in their aboriginal Snoqualmie River Valley. Gibbs (1877:179) indicates that the land set aside for Puget Sound Indians was grossly inadequate to accommodate even a fraction of the local Indians. Lt. Phelps (1856:16) suggests that fraud and embezzlement of funds and supplies created additional hardships. Bagley (1929:135) contends that the treaties were never taken seriously by whites. And Lane (1975:10) indicates that Indians were forced to leave the reservation in order to survive. Chirouse (Jan. 27, 1876) wrote a short note to the Superintendent of Indian Affairs indicating that great numbers of Indians were leaving the reservation because "they cannot support their families on the reservation." Ed Davis (1875-1987) states that when the government issued the order to move the Snoqualmie Indians to the reservation at Tulalip, Pat Kanin called a meeting of the tribes to discuss their course of action. A few families complied with the orders and moved to the reservation but others decided to remain on their aboriginal land. Those who stayed argued,

> No, we don't want to go there. That is the land of the saltwater people. We are river people. We are going to stay where we were born and raised. (Tollefson and Pennoyer, 1986:208)

The Snoqualmie remained and established Indian communities along Lake Sammamish near Tolt River, and at Meadowbrook (Tollefson and Pennoyer, 1986:211-254).

Early settlers confronted a formidable task of clearing dense primeval forests of Puget sound for aricultural, commercial, and industrial development. Consequently, they sought Indians for a supply of cheap labor to clear the land. White employers in turn offered a measure of economic security and political protection for their Indian laborers. The Snoqualmie moved close to their white employers and worked part-time clearing land, cutting logs, and harvesting hops. Craine (1983:1-2) suggests that the Indians lived in "shacks and hovels," and were "quite industrious" working for whites, and wanted nothing more than "to be left alone to hunt and fish."

Many years later Indian agent Buchanan (1914:112,113) reports that there were many Indians who were landless because there was "insufficient land reserved" for them as stipulated in the Point Elliott treaty. Bagley

(1929:123) observes that with each passing round of negotiations with the federal government, the Indians usually received "the worst of the affair." In an address presented to the Washington State Legislature, Buchanan (1915:109-11) accused the Legislature of deliberate discrimination and exploitation of basic treaty rights and resources. He charged the state with Virtually stripping the Indians of their treaty rights, basic subsistence resources, and economic livelihood under the guise of state fish and game laws.

In an effort to counteract this increasing intrusion by the state into Indian hunting and fishing rights, the Snoqualmie Indians met at Tolt (Carnation), Washington in 1914 to reorganize and install Jerry Kanin, nephew of Pat Kanin, as their new head chief. On June 2, 1916, some 325 Snoqualmie Indians gathered at Tolt, the former political center of their chiefdom, to organize a tribal council patterned after their old political chiefdom under Chief Pat Kanin. Four area representatives replaced the four former district subchiefs while a president and vice president replaced the former head chief and his assistant.

The Snoqualmie Indians have held annual business meetings since 1916 to elect members to the tribal council and to conduct tribal business. A comparison of the Snoqualmie Chiefdom Council of 1855 under Chief Pat Kanin with that of the 1916 tribal council under Chief Jerry Kanin reveals this similarity (Tollefson, 1987:134):

TYPES OF OFFICE	PAT KANIN COUNCIL, 1855	JERRY KANIN COUNCIL, 1916
Chief Executives from Tolt area	Pat Kanin, paramount chief Cush Kanin, assistant chief	Jerry Kanin, president/chief Andrew Kanin, assist./chief
Dist. Chiefs		
Tolt District	John Kanin	Bill Kanin
Fall City Dist	Jim Kanin	George Luke
Monroe Dist.	Hutty Kanin (?)	Ed Perceval
North Bend Dist	Klamish Kanin (?)	Solomon George
New Business Offices: Chairman		
Secretary Treasurer		Edna Perceval (added later)
New Tolt Members: (Chief and Subchief votes)		Jim Graham (Tolt) Snoqualmie Charlie (Tolt)

The newly organized tribal council moved rapidly to seek their treaty rights. Assistant Indian commissioner Merett (October 15, 1917) states that the Snoqualmie and Snohomish tribes hired attorney Jesse Simmons to bring a suit against the federal government. On November 15, 1917, Chief Jerry Kanin wrote that his people "made a contract with Jesse Simmons...to represent our people and make a settlement with the government for us." Later, Chief Kanin (November 15, 1919) requested a reasonable amount of land from the federal government since his people had received nothing from their 1855 treaty: "no place to live, no place to hunt, no place to fish, and no place to plant." Kanin's goal was to either acquire land or money to buy land.

The Roblin Report (1919:4) states that there were "a considerable number of full-blood Snoqualmie Indians...around Tolt, Fall City, and the towns in the district." He notes that "Indian settlements have not been completely eliminated" and that "the majority have no land." Bird (November 30, 1917), office of Carnation City Clerk, identified Jerry Kanin as the "lineal descendant" of Pat Kanin and the "present head of the fragment that remains of this once prosperous and numerous tribe."

In a follow-up letter, Agent Dicrene (April 8, 1920) states that he and Agent Ellis "visited the Snoqualmie Indians at Tolt, Snoqualmie Falls, and that neighborhood." They found most of the Indians to be "quite old (and) seemed to be well taken care of by relatives with whom they lived." The tribal network distributed food and supplies up and down the valley as subsistence resources were harvested just as they continue to do to this day.

Snoqualmie elder Leona Eddy, who has attended all but two of their annual tribal meetings since 1920, indicates that most of the 1920-1940 meetings involved discussions regarding their hunting and fishing rights. Tribal meetings were conducted according to Roberts Rules of Order with a Tulalip Indian agent usually in attendance. It is important to differentiate between Tulalip Indian Agency (eventually moved to Everett) which supervised a geographical area of tribes and the Tulalip Indian Reservation which consisted of remnants from several tribes.

A group of unallotted Puget Sound Tribes agreed to have the Northwestern Federation of Americas Indians represent their cause (Dickens, December 10, 1921). The Tulalip Agency (February 15, 1922) raised the treaty issue that "If the provisions of the treaties were intended to extend into the third and fourth generations perhaps the government may be delinquent in its promises."

The Puget sound tribes argued that the treaties were still valid and so hired legal council to pursue their claims. Recent court cases, like the Judge Bolt decision of 1974, uphold the validity of the Point Elliott Treaty.

The Snoqualmie formed a constitutional system of tribal government April 13, 1927 "in order to properly present the rights of the Snoqualmie tribe." This formal tribal organization occurred some five years prior to the Indian Reorganization Act passed in 1934. The Snoqualmie Indians have received extensive documentation in the historical and ethnological literature of the Puget Sound. For example, Roblin (1919) singled out the Snoqualmie as one of eight landless tribes that should be given special consideration by the federal government. The Roblin rolls documented the authenticity of the Snoqualmie Indians geneological ties to the Indian treaty signers.

Chief Jerry Kanin reported to the Tulalip Indian Agent (April 21, 1927) that he had been arrested for fishing and trapping without a license. Chief Kanin explained that this was his livelihood and that he had done it all of his life. He quoted their treaty rights "to take fish at usual and accustomed grounds: along with the privilege of hunting and gathering roots and berries on open and unclaimed lands." The superintendent of the Indian agency responded, "It does seem that the intent of the Treaty was to preserve for the Indians their right to hunt and fish in the usual and accustomed places," adding "It will no doubt be necessary to fight the question out in court.

Thus began a long series of legislative and legal battles to preserve the Snoqualmie treaty rights, and to secure a land base for tribal identity, security, and preservation. Meanwhile, the Snoqualmie moved to consolidate their old Snoqualmie Confederacy by adding representatives from the Skykomish and Pilchuck to their council. William Bagley of the Skykomish and Leo Daniels of the Pilchuck were added to the Snoqualmie Council just as their ancestors had served under their historic Chief, Pat Kanin (Martin, Docket No. 93:52).

Eventually, the Snoqualmie participated in several legal measures to preserve their treaty rights. For instance, on Octoer 11, 1933, nineteen Sound tribes took their treaty claims to the Court of Claims (No. F-275) under Attorney Griffin's legal council (October 26, 1933).

A few years later, Field Agent Johnston (March 1, 1937) proposed a 10,240-acre reservation site along the Tolt River for the Snoqualmie Indians. Agent Johnston noted that the federal government had "deprived the younger generation of land and home." The proposed reservation site included land for grazing, gardening, fishing, and logging for approximately 25 to 30 families who were "never identified with other reservations." Agent George LaVatta (March 16, 1937) states:

> ...that suitable and sufficient land should be secured for this group which would enable them not only to avail themselves of the benefits of reorganization, but will also give them an opportunity to build homes for themselves and their families.

Superintendent Upchurch (May 17, 1939) supported the legitimacy of the Snoqualmie Tribe's "claim to further lands and...proposed acquisition of the Tolt River Valley" to the Commissioner of Indian Affairs, John Collier. World War II broke out and the proposed Snoqualmie Reservation never materialized.

Nevertheless, the Snoqualmie continued to pursue their Treaty rights and eventually the Court awarded the Snoqualmie and Skykomish a settlement of $257,698.29 on September 23, 1968 (Docket No. 93:395). The proposed reservation, the land claim settlement payment, and numerous historical documents attest to the legitimacy of the Snoqualmie claims.

Recent research papers have been presented at several professional meetings in support of the ethnological persistence and political continuity of the Snoqualmie Tribe: the Northwest Anthropological Conference (Tollefson, 1986a, 1987); the American Anthropological Association (Tollefson, 1986b, 1986c); and the Applied Anthropological Conference (Tollefson, 1988). General sessions have been held at the local, regional, and national levels by anthropologists interested in evaluating the ethics of anthropologists and the use of anthropological documents in the Federal Acknowledgment Petition process: Puget Sound Anthropological Society Workshop (November 7, 1987); American Anthropological Society (November 20, 1987); Northwest Anthropological Conference (March 11, 1988); and the American Applied Anthropological Conference (April 22, 1988). Additional data has also been published (Tollefson and Pennoyer, 1986:1-450; Tollefson, 1987:121-136). These general sessions at the professional meetings have assembled anthropologists from across the country and given them the opportunity to review and evaluate the validity and historicity of the Snoqualmie research data.

It is now incumbant upon the federal government to recognize the existence of the Snoqualmie Tribe as an historical entity. Just as Chief Pat Kanin protected and preserved the early white settlers in the Puget Sound there is presently a need for the descendants of the white settlers to reciprocate and protect and preserve the descendants of Chief Pat Kanin.

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Public *Ethno*history? Or, Writing Tribal Histories at the Bureau of Indian Affairs

WILLIAM W. QUINN, JR.

IN THE FALL of 1978 the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), promulgated new regulations outlining the "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," as it is stated in Title 25 of the *Code of Federal Regulations*, Part 83 (25 CFR 83). These regulations essentially put the burden of proof on claimants to Indian tribal status to establish, principally through historic documentary sources and more recent descriptions of their communities, that they are and have been since first sustained contact with Euro-American settlers (i.e., often since the mid-seventeenth century) genuine and cohesive Indian tribes. Prior to 1978, there had been no standard, systematic process by which Indian groups could petition the United States for federal acknowledgment, thus giving them access to the benefits and services provided by the government exclusively for federally acknowledged tribes.[1] But a deluge of petitions came in the wake of two significant federal court decisions in the mid-1970s, in which federal acknowledgment was a threshold issue, and this virtually forced the Interior Department and the BIA to create and adopt 25 CFR 83. Along with the regulations came the need for professionals to evaluate the evidence and documentation submitted by petitioners and to decide its adequacy, so positions were advertised to hire Indian-specialist genealogists, cultural anthropologists, and Indian-specialist historians—or ethnohistorians.

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[1] For general background information about both the history of U.S.-Indian policy and the legal status of Indian tribes in the United States, see the *magnum opus* of Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, 1984); see also Charles F. Wilkinson, *American Indians, Time and the Law* (New Haven: Yale University Press, 1987), Jane F. Smith and Robert M. Kvasnicka, eds., *Indian-White Relations: A Persistent Paradox* (Washington D.C.: Howard University Press, 1981), and S. Lyman Tyler, *A History of Indian Policy* (Washington D.C.: U.S. Department of the Interior, 1973).

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My entrance onto the BIA acknowledgment scene over five years ago was straight from academia. Having earned the M.A. and Ph.D. at the University of Chicago's History of Culture program, my training had not fully prepared me to be a public historian. An interdisciplinary program at Chicago, the History of Culture provided a perfect synthesis of history, anthropology, and the history of religions. By allowing me to concentrate on traditional cultures (particularly those of North America), it had given me the perfect basic tools to work at the BIA, except that now I had to gear my writing to the public, and not to my fellow academics. The use of recondite sesquipedalianisms and similar terms of art was strictly forbidden. After a year or so of growing pains, I finally adapted to the world of public history.

It has been my experience that few people outside the history profession have a clear understanding of what is meant by "public history." Lay persons commonly think that public historians research and write history about "the public," or certain aspects of "the public," instead of about what they perceive to be the historian's usual subjects, i.e., *major* events and people in the past. Among the dozen contributors to David Trask and Robert Pomeroy's *The Craft of Public History*—which, beyond being a thorough bibliography, is an excellent outline of the substrata of public history—is Lawrence de Graaf. De Graaf remarked astutely in the introduction to his section of the book that "the statement of C.V. Wedgewood that history's mansion has enough rooms to accommodate all of us is put to a serious test in the case of public history, particularly when applied to the wide array of research and writing that characterizes it."[2] Perhaps an analogue to the public's somewhat oblique perception of public history is provided by professional historians, who are sometimes similarly unenlightened about the existence of hybrid disciplines within the highly specialized substrata of public history. My purpose is to introduce one such hybrid—public ethnohistory—to lay persons and professional historians.

As an ethnohistorian for the Bureau of Indian Affairs, U.S. Department of the Interior, the principal audience for which I produce detailed ethnohistorical reports of Native American Indian tribes is not one of academic specialists, but rather the American public, which presumably makes me a public ethnohistorian. To my knowledge, this position is unique in the government, and decisions made at this level have both an immediate and profound impact on the lives and future generations of specific Indian peoples. Though what follows is a description of only one public history sub-category—public ethnohistory at the BIA—one should keep in mind that the needs of government agencies, corporations, and other public institutions for sound data and sensible, assimilable conclusions based on these data are constantly changing, and the varieties of new and creative responses to these needs are appearing as subcategories in the field of public history.

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[2] David F. Trask and Robert W. Pomeroy III, eds., *The Craft of Public History: An Annotated Select Bibliography* (Westport, Conn.: Greenwood Press, 1983).

Ethnohistorians use an interdisciplinary approach to the study of past cultures, traditional or tribal societies, and specific social or cultural phenomena, incorporating the best principles and methods of history and anthropology in the broadest definitions of these fields. My use of the term "public ethnohistory" is not intended to raise the hair on the necks of my fellow members of the American Society for Ethnohistory. Yet this term is probably as novel, and possibly as inscrutable, to most ethnohistorians as it is to lay persons and historians, since ethnohistory is a field in which one finds predominantly academic and other "non-public" specialists. Disregarding for the present the predictable reactions to the term "public ethnohistory," it will be necessary to give a brief introduction to the legal and administrative milieu and terminology within which my particular brand of Indian ethnohistory is practiced at the BIA.

Indian tribes can be categorized any number of ways, depending upon the needs or objectives of the categorizor. For our purposes here, a simple bifurcation will serve best. Indian tribes can be divided into two categories: those which are federally acknowledged and those which are not federally acknowledged. In the lower forty-eight states, there are currently 311 federally acknowledged Indian tribes; the exact number of unacknowledged Indian groups is not known, but estimates range from 90 to 150. As of this writing, 105 unacknowledged Indian groups have petitioned the United States for federal acknowledgment. Of that number, 20 petitions have been evaluated—with eight tribes acknowledged and twelve groups denied—leaving 85 yet to evaluate. There are other unacknowledged Indian groups in the United States which either have not yet or will never petition for federal acknowledgment.

The federal acknowledgment of Indian tribes is somewhat analogous to the acknowledgment by the government of the United States of a foreign sovereignty. It consists of and is defined by a special government-to-government relationship between the government of the United States and the duly constituted government of the Indian tribe. Unacknowledged Indian groups seeking to become federally acknowledged can petition the United States for acknowledgment. The petitioning process is explicated, and the requisite criteria delineated, in Part 83 of Title 25 of the *Code of Federal Regulations* (25 CFR 83). Acceptable petitions for federal acknowledgment submitted by unacknowledged Indian groups usually contain prodigious amounts of historical and ethnographic data outlining various facets of the group's existence since first sustained contact with Euro-American culture. The job of evaluating these petitions, and conducting whatever supplemental research may be necessary, falls to the bureau's Branch of Acknowledgment and Research, where I am employed as a public ethnohistorian.

In contrast to unacknowledged Indian groups in the United States, federally acknowledged tribes both receive and have discretionary access to a wealth of benefits and services provided by the federal government. The benefits and services provided to tribes by the BIA alone are considerable, and include grants-in-aid for housing, education, employment training, tribal and community improvement projects, economic development, and general assistance. Most members of federally acknowledged tribes are provided with free medical and dental care by the Indian Health Service, a part of the U.S. Department of Health and Human Services. Other benefits and services are provided to Indians by other government agencies, in addition to such advantages as legal standing to file suit in federal courts for land claims and other grievances, having land bases taken into federal trust status, and receiving preference in hiring and in obtaining various contracts under minority assistance programs. While increased participation in these programs brings to federally acknowledged tribes a commensurably increased degree of responsibility and accountability to the government, this problematic trade-off, as it is viewed by some tribes, is clearly outweighed by the extent and potential of services and benefits provided to tribes by the United States. This, at least, is the perception of the 105 unacknowledged Indian groups petitioning for federal acknowledgment and the consequent right to begin receiving these benefits and services. The stakes are high, and the effects of federal acknowledgment on the social, political, and economic dynamics of Indian tribes are always significant, if not radical.

For an unacknowledged Indian group to become an acknowledged tribe within the meaning of federal law, i.e., meeting successfully the seven mandatory criteria found specifically in 25 CFR 83.7 (a–g), such a group must: (a) establish that they have been identified from historical times to the present on a substantially continuous basis as "American Indian" or "aboriginal"; (b) establish that a substantial portion of the group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which historically inhabited a specific area; (c) furnish a statement of facts which establishes that the group has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present; (d) furnish a copy of the group's present governing document, or in the absence of such a written document, a statement describing in full the membership criteria and the procedures through which the group currently governs its affairs and its members; (e) furnish a list of all known current members of the group and a copy of each available former list of members based on the group's own defined membership criteria, and show that the membership consists of individuals who have established descendancy from a tribe that existed historically or from historical tribes that combined and functioned as a single autonomous entity; (f) establish that the membership of the group is composed principally of persons who are not members of any other North American Indian tribe; and (g) establish that neither the group nor its members are the subject of congressional legislation that has expressly terminated or forbidden the federal relationship. Since the onus or burden of proof to substantiate the claim of continuous tribal existence under these criteria rests with the petitioner, voluminous ethnohistorical data are usually submitted. The onus of evaluating the materials relating to parts (a) through (c) above, conducting whatever supplemental research in local or national repositories or *in situ* oral history interviews may be necessary, preparing a scholarly and exhaustive report for public consumption (the trickiest part), and, most relevant of all, making a recommendation to acknowledge or deny the petitioner, rests with the BIA's public ethnohistorian.

Little of this work is done by contract, though contract history has been considered more seriously in recent years due to the increasing backlog of acknowledgment petitions at the BIA. Most of the public ethnohistorian's time is devoted to writing these tribal histories, though fielding obscure historical questions from all segments of society takes more time from this work than it should. The level of archival research and documentation is high, and requires a rather high proportion of investigation into primary documents. To date, this research has effected the completion of 20 petitions of a total number of 105, with 8 acknowledged and 12 denied acknowledgment. Of those completed, several pose threats of litigation, with the branch and its personnel named as defendants. This places an ominous cloud over the work at the branch; what is worse is that such threats appear to be the future *modus operandi* of all disgruntled parties in disagreement with the branch's recommendations. In light of the increasing threat of such lawsuits, working liaisons between the bureau's ethnohistorian and the department's solicitor are also on the increase. While the final disposition of cases rests either with the assistant secretary or possibly the courts, the disposition of the submitted or gathered evidence and documentation rests with the branch. Reluctant to part with all that history, the branch willingly allows researchers to use the vast amount of unrestricted records until their final disposition in the National Archives is arranged. Copies of all the branch's published ethnohistorical reports on acknowledgment petitions are available to the public upon request.

The actual decision to recommend federal acknowledgment for a petitioning Indian group or to recommend denial of the group's petition is what separates my position as a "front line" public historian—or ethnohistorian—from "agency" public historians. While the role of the agency historian, i.e., one who is responsible for researching past and recording present events and policies of the particular agency for which he or she works, is both important and necessary, it is nonetheless predominantly a role of producing a record of the agency's existence through time which the policymakers within the agency may or may not use, at their discretion. Similarly, the contract historian is usually hired to provide background material and precedent, etc., relative to a specific aspect of an agency's or corporation's activities, often in anticipation of a major policy decision confronting the organization. The actual product of the agency or contract public historian is, for the most part, not dispositive, but rather is a valuable tool or aid for those who make substantive decisions and establish policy. Somewhat more rare "front line" public historians, on the other hand, will usually be in a programmatic position which requires them to make decisions within the framework of regulatory or statutory criteria based primarily on the historical record, so that the soundest decision made is that which rests upon the most complete and thorough historical data. In the case of the public ethnohistorian at the BIA, such decisions are quite literally awesome; they are made with great care and deliberation, since not only the present lives of the thousands of individuals in the petitioning Indian groups are dramatically affected by the decision, but the lives of future generations of their descendants will also be affected.

Anyone who works for the government, or any large bureaucracy, for that matter, will question whether it is actually within the authority of a level GS-13 government ethnohistorian to make decisions of such relevance to the personal lives of so many. The answer is, effectively yes; technically no. The BIA's public ethnohistorian in the Branch of Acknowledgment and Research, along with his colleagues, makes a recommendation to acknowledge or deny a petitioning Indian group. This recommendation is sent up the line of administrative authority for signatures, and, if ultimately signed by the Assistant Secretary of the Interior—Indian Affairs, it becomes policy. Although the assistant secretary makes the final decision, in the ten years of the branch's existence, a recommendation from the Branch of Acknowledgment and Research has never been overruled. It may be that, in some future case, a recommendation will be negated by an assistant secretary for political reasons, but this official would then have to explain to the interested parties affected, to their communities, to the press, and possibly to congressional committees, why, in the face of so much ethnohistorical data, he or she chose to decide against the recommendation.

It has therefore been the public ethnohistorian at the BIA who, with his colleagues, effectively decides the fate of the Indian groups that petition for federal acknowledgment. The signature of the bureau's chief executive officer, while bestowing administrative legitimacy on the recommendation, is essentially a perfunctory act which, since the inception of the federal acknowledgment process, has been done *pro forma*. Thus, it is more than simply to identify the new public-ethnohistory rooms in C.V. Wedgewood's "mansion of history" that I submit these notes for the perusal of my fellow public historians; I also wish to show that decisions that have a direct and profound impact upon the lives of many Native Americans are effectively made by members of our profession. What I do not know, and cannot address here, is how many other such public historians—or ethnohistorians—make decisions which similarly affect other segments of our national population.